TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1936

No. 837

CHAS. C. STEWARD MACHINE COMPANY,
PETITIONER,

vs.

HARWELL G. DAVIS, INDIVIDUALLY AND AS COLLECTOR OF INTERNAL REVENUE.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

PETITION FOR CERTIORARI FILED MARCH 26, 1937.

CERTIORARI GRANTED MARCH 29, 1937.

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[fol. a] [Caption omitted]

[fols. 1-5]

IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DIVISION OF THE NORTHERN DISTRICT OF ALABAMA

At Law. No. 4722

CHAS. C. STEWARD MACHINE COMPANY, a Corporation, Plaintiff,

v.

HARWELL G. DAVIS, Individually and as Collector of Internal Revenue for the District of Alabama, residing in and having an office in the City of Birmingham, County of Jefferson, State of Alabama, Defendant

BILL OF COMPLAINT—Filed March 10, 1937

Plaintiff avers that it is corporation organized under the laws of the State of Alabama with its principal place of business at Birmingham, Jefferson County, Alabama, and is now and at all times hereinafter mentioned has been engaged in the manufacture of coal mining machinery; the defendant Harwell G. Davis is the Collector of Internal Revenue for the collection district of Alabama charged by law with the duty of collecting taxes, fines and penalties imposed by the statutes hereinafter referred to, and that [fol. 6] he is a citizen of the State of Alabama and resides and has his office in the City of Birmingham, State of Alabama; that this is a suit for the recovery of an internal revenue tax illegally assessed and collected and is a suit at law of a civil nature.

Count One

Plaintiff claims of the defendant the sum of $46.14 for this:

That pursuant to the provisions of the Act of Congress, approved August 14, 1935, commonly known as the Social Security Act, entitled "An Act To provide for the general welfare by establishing a system of Federal old-age benefits, and by enabling the several States to make more ade-

quate provision for aged persons, blind, persons, dependent and crippled children, maternal and child welfare, public health, and the administration of their unemployment compensation laws; to establish a Social Security Board; to raise revenue; and for other purposes," plaintiff on March 2, 1937, as an employer of eight or more employees during the year 1936, as defined in Title IX of such Act, paid to the defendant whose duty it was to collect the taxes, fines and penalties imposed by such Act, the sum of $46.14, being the tax imposed on plaintiff by Title IX of such Act for the period from January 1, 1936 to December 31, 1936; that the Act under which such tax was paid to the defendant is unconstitutional and invalid and that such tax was wrongfully and illegally assessed and collected by the defendant for the following reasons:

1. The plan and scheme set up by Congress in the Social Security Act has for its purpose and effect the enactment [fol. 7] of unemployment compensation laws by the States, which are not the voluntary acts of the governments of the States, but which are brought about by the coercion and compulsion of the Federal Act.

2. Such plan and scheme violate the 9th and 10th Amendments to the Constitution of the United States in that Congress, through the Social Security Act, undertakes to set up a Federal system of unemployment compensation in order to engage in the regulation of matters with which it is not concerned under the Constitution and which are wholly within the power and jurisdiction of the states to regulate. Under such plan and scheme the States surrender control of the monies collected from their citizens and attempt to surrender to the United States effectual control of the construction, operation and methods of administration of the laws of the States.

3. Under the pretext of exercising its powers Congress, by the Social Security Act, undertakes to effectuate an end which is inconsistent with the limited grants of power to Congress in order to bring about a system of unemployment compensation, which is a matter reserved to the States or to the people thereof.

4. Under the system created by the Social Security Act and the State acts enacted under the coercion thereof, the property of claimant and other employers is taken for the

benefit of an arbitrarily defined class without the payment of just compensation to claimant and such other employers.

5. The taxes imposed under the Social Security Act are not taxes creating revenue for the support of the Government in the accomplishment of its constitutional purposes, but are imposed for the purpose of providing funds for disbursement in the administration of State laws relating to [fol. 8] matters beyond the control of Congress and which the Social Security Act coerces and compels the States and the people thereof to enact.

6. The Social Security Act violates Article I, Section 1, of the Constitution in that it attempts to vest in the Social Security Board power to determine what sums shall be paid out of the Treasury of the United States for the administration of State unemployment compensation laws without fixing any legal standards whereby the amounts to be paid to any State can be determined except by the exercise of discretion legislative in character and extent.

Plaintiff on, to-wit, March 2, 1937 filed with the Commissioner of Internal Revenue a claim for a refund of the tax so paid according to the provisions of law in that regard and regulations of the Secretary of the Treasury established pursuance thereof, a copy of such claim being attached hereto marked Exhibit 1 and made a part hereof as if fully set out herein; that the Commissioner of Internal Revenue did on March 9, 1937, render a decision rejecting and denying said claim for refund in full, a copy of the letter notifying plaintiff of such rejection and denial being attached hereto as Exhibit 2 and made a part hereof, as if fully set out herein.

Borden Burr, Wm. Logan Martin, Walter Bouldin,
Attorneys for Plaintiff.

Service of a copy of the foregoing complaint is hereby accepted and other or further service is hereby waived.

This March 10, 1937.

Jim C. Smith, Attorney for Defendant.

[fol. 9] EXHIBIT 1 TO BILL OF COMPLAINT

Claim

To be Filed with the Collector Where Assessment Was Made or Tax Paid

STATE OF ALABAMA,
County of Jefferson:

Name of taxpayer of
purchaser of stamps Chas. C. Steward Machine Co.
Business address: (Street) 1236 No. Apalachee St., (City) Birmingham, (State) Alabama.

The deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:

1. District in which return (if any) was filed District of Alabama.
2. Period (if for income tax, make separate form for each taxable year) from Jan. 1, 1936, to Jan. 1, 1937.
3. Character of assessment or tax Employers Tax Title 9 Social Security Act.
4. Amount of assessment, $46.14; dates of payment March 2, 1937.
5. Date stamps were purchased from the Government ——, ——.
6. Amount to be refunded $46.14.
7. Amount to be abated (not applicable to income or estate taxes $—.
8. The time within which this claim may be legally filed expires, under Section 1112 of the Revenue Act of 1926, on March 2, 1941.

The deponent verily believes that this claim should be allowed for the following reasons:

The reasons for the allowance of this claim are set forth on the attached sheets identified as Exhibit A and made a part hereof.

(Signed) Chas. C. Steward Machine Co., by W. P. DeBardeleben, Sec. & Treas.

Sworn to and subscribed before me this 2 day of March, 1937. (Signature of officer administering oath:) L. J. Tyner, (Title) Notary Public. (Seal.)

[fol. 10] EXHIBIT "A" TO CLAIM FOR REFUND

The deponent verily believes that this claim should be allowed for the following reasons:

1. The Act of Congress approved August 14, 1935 and known as the Social Security Act and the tax collected from this claimant under Title IX of such Act are unconstitutional and void on each of the grounds stated below.

2. The plan and scheme set up by Congress in the Social Security Act has for its purpose and effect the enactment of unemployment compensation laws by the states which are not the voluntary acts of the governments of the states, but which are brought about by the coercion and compulsion of the Federal Act.

3. Such plan and scheme violate the 9th and 10th Amendments to the Constitution of the United States in that Congress, through the Social Security Act, undertakes to set up a Federal system of unemployment compensation in order to engage in the regulation of matters with which it is not concerned under the Constitution and which are wholly within the power and jurisdiction of the states to regulate. Under such plan and scheme the states surrender control of the monies collected from their citizens and attempt to surrender to the United States effectual control of the construction, operation and methods of administration of the laws of the states.

4. Under the pretext of exercising its powers Congress, by the Social Security Act, undertakes to effectuate an end which is inconsistent with the limited grants of power to Congress in order to bring about a system of unemployment compensation, which is a matter reserved to the states or to the people thereof.

[fol. 11] 5. Under the system created by the Social Security Act and the state acts enacted under the coercion thereof, the property of claimant and other employers is taken for the benefit of an arbitrarily defines class without the payment of just compensation to claimant and such other employers.

6. The taxes imposed under the Social Security Act are not taxes creating revenue for the support of the Government in the accomplishment of its constitutional purposes,

but are imposed for the purpose of providing funds for disbursement in the administration of state laws relating to matters beyond the control of Congress and which the Social Security Act coerces and compels the states and the people thereof to enact.

7. The Social Security Act violates Article I, Section 1, of the Constitution in that it attempts to vest in the Social security Board power to determine what sums shall be paid out of the Treasury of the United States for the administration of state unemployment compensation laws without fixing any legal standards whereby the amounts to be paid to any state can be determined except by the exercise of a discretion legislative in character and extent.

I, Walter Bouldin, attorney at law, a member of the firm of Martin, Turner & McWhorter, do hereby certify that I prepared the foregoing claim and Exhibit thereto; that the facts therein stated are not known to me of my own knowledge but the statements of fact therein are based upon information furnished by the taxpayer which I believe to be true.

This 2 day of March, 1937.

Walter Bouldin.

[fol. 12] EXHIBIT 2 TO BILL OF COMPLAINT

IT:SS:R&A.
SMA.

Mar. 9, 1937.

Charles C. Steward Machine Company, 1236 North Apalachee Street, Birmingham, Alabama.

SIRS:

Reference is made to your claim for refund of $46.14 which you paid to the Collector of Internal Revenue, Birmingham, Alabama, on March 2, 1937, as excise tax due for the calendar year 1936 on return, Form 940, filed with the collector on the same date under the provisions of Title IX of the Social Security Act.

It is alleged that the assessment and collection of the tax is illegal for the reason that the Act under which the assessment and collection is made is unconstitutional.

The tax was assessed and collected in accordance with existing law and, therefore, the Bureau of Internal Revenue is without authority to refund such tax unless and until it has been determined by the courts that the tax is unconstitutional. Your claim for refund is rejected in full.

Should further correspondence relative to this matter be necessary, please refer to the symbols IT:SS:R&A-SMA.

Respectfully, (Signed) Guy T. Helvering, Commissioner.

SMA:MH.
3-9-37.

[fol. 13]. In United States District Court

Demurrer—Filed March 10, 1937

Now comes the defendant and demurs to the complaint of the plaintiff and to each count thereof separately and severally and as grounds of said demurrer sets down and assigns separately and severally each of the following grounds, separately and severally:

1. The allegations of said count that the Act, known as Social Security Act, is unconstitutional and invalid, are mere conclusions of the pleader.

2. The facts alleged in said count are insufficient to constitute a cause of action against the defendant.

3. For that it affirmatively appears from the allegations of said count that the sum sought to be recovered is for taxes imposed as income taxes under the Constitution of the United States.

4. For that it is not alleged in said count, except by way of conclusion of the pleader, that the taxes therein mentioned and sought to be recovered, were illegally assessed and collected.

5. For that it is alleged in said count that the defendant Collector assessed the taxes therein claimed and it affirmatively appears that said taxes were assessed by the Commissioner of Internal Revenue, acting under the direction of the Secretary of the Treasury.

6. For that sufficient facts are not alleged therein to constitute a cause of action against the defendant.

[fol. 14] 7. For that the taxes sought to be recovered are excise taxes imposed by an Act of Congress and under the Social Security Act go as free funds, when collected, into the Treasury of the United States for the general welfare of the United States.

8. For that the facts averred are insufficient to make it appear that the taxes therein mentioned are not in truth taxes lawfully laid for the general welfare of the United States.

9. For that the alleged reasons, numbered one through six both inclusive, separately and severally set forth therein for the purpose of attempting to show that the Act under which the tax sought to be recovered is unconstitutional and invalid and that such tax was wrongfully and illegally assessed and collected by the defendant, are mere conclusions of the pleader and are not supported by the provisions of the Social Security Act.

10. There are not sufficient facts averred to make it appear that the defendant committed a trespass against the plaintiff in collecting from plaintiff the taxes sought to be recovered.

11. For that Title IX of the Social Security Act, under and by virtue of which plaintiff alleges the defendant assessed and collected the taxes sought to be recovered, was enacted by the Congress pursuant to powers granted to the Congress by the Constitution of the United States.

12. The facts averred are insufficient to show that the defendant in collecting from the plaintiff the taxes sought to be recovered committed any act which would legally constitute a trespass against plaintiff.

[fol. 15] 13. For that it is not sufficiently averred, except by way of conclusion of the pleader, that the defendant, in collecting the taxes sought to be recovered, or otherwise, committed any trespass against the plaintiff.

14. The facts averred are insufficient to show that the defendant in collecting the taxes sought to be recovered or in any other way in connection therewith, committed any trespass against or upon the plaintiff.

15. The plaintiff's complaint does not state any facts which would warrant a judgment by the Court against this defendant and in favor of the plaintiff.

16. It affirmatively appears from the allegations thereof that the alleged claim for a refund alleged to have been filed with the Commissioner of Internal Revenue and by him denied or rejected, was insufficient to warrant its allowance by the Commissioner and is wholly inadequate to sustain a cause of action in this Court for the refusal or rejection thereof by the Commissioner.

17. For that it is not averred in said count except by way of conclusion of the pleader that the defendant Collector, in committing the acts alleged therein, did so will fully and intentionally.

18. For that it affirmatively appears from the allegations of said count that the defendant Collector, in committing the acts therein alleged, did so in the performance of his duties under the provisions of the Social Security Act and that the defendant Collector acted under the direction of the Commissioner of Internal Revenue of the United States in collecting the money mentioned and claimed in said count.

Jim C. Smith, Counsel for Defendant.

[fol. 16] IN UNITED STATES DISTRICT COURT

ORDER SUSTAINING DEMURRER AND DISMISSING CAUSE—Filed March 11, 1937

This cause coming on to be heard and being submitted to the court on this day upon demurrer heretofore filed by the defendant.

Thereupon, the court being fully advised in the premises is of the opinion that the demurrer of the defendant should be sustained and it is therefore by the Court:

Ordered, Adjudged and Decreed that the defendant's demurrer to the complaint be and the same is hereby sustained, to which action of the Court the plaintiff reserves an exception, which exception is duly allowed; and

Thereupon, the plaintiff declining to plead further, it is Ordered, Adjudged and Decreed by the Court that this cause be dismissed and that the defendant go hence without day and recover of and from the plaintiff his costs herein expended, for which execution may issue, to which action of the Court in sustaining the defendant's demurrer

and in dismissing this cause, separately and severally, the plaintiff duly excepts, separately and severally, which exceptions are separately and severally allowed.

This 11th day of March, 1937.

David J. Davis, United States District Judge.

[fol. 17] In United States District Court

Petition for Appeal—Filed March 11, 1937

Now comes Chas. C. Steward Machine Company, a corporation, plaintiff in the above styled cause, and conceiving and believing itself aggrieved by the judgment and decree of the court entered on, to-wit, March 11th, 1937, in the case in the United States District Court of the Northern District of Alabama, in which Chas. C. Steward Machine Company, a corporation, was plaintiff, and Harwell G. Davis, Individually and as Collector of Internal Revenue for the District of Alabama, was defendant, does pray for an appeal to the United States Circuit Court of Appeals for the Fifth Circuit, and it, the said Chas. C. Steward Machine Company, a corporation, prays that this appeal be allowed, that citation issue as provided by law and that a transcript of the record, proceedings and papers upon which said judgment and decree were rendered and entered, duly authenticated, be sent to the United States Circuit Court of Appeals for the Fifth Circuit for the purpose of having reviewed the ruling and decision in such judgment and decree contained and the errors therein corrected and such decree reversed according to law.

Borden Burr, Wm. Logan Martin, Walter Bouldin,
Attorneys for Plaintiff.

[fol. 18] In United States District Court

Assignment of Errors—Filed March 11, 1937

Now comes Chas. C. Steward Machine Company, a corporation, plaintiff (appellant) in above styled cause, and respectfully submits the following assignments of errors upon which, separately and severally, plaintiff will rely upon the appeal from the judgment and decree made and

entered by this Court on March 11th, 1937, sustaining defendant's demurrer to the complaint and dismissing the cause:

1. The Court erred in sustaining defendant's demurrer to the complaint.

2. The Court erred in sustaining the defendant's demurrer to Count One of the complaint.

3. The Court erred in dismissing plaintiff's complaint.

4. The Court erred in holding the tax imposed by Title IX of the Social Security Act to be valid.

5. The Court erred in holding that Titles III and IX of the Social Security Act do not violate the 9th Amendment.

6. The Court erred in holding that Title III and IX of the Social Security Act do not violate the 10th Amendment.

7. The Court erred in holding that the Social Security Act is not invalid as a coercion upon the states to enact unemployment compensation laws.

[fol. 19] 8. The Court erred in holding that the Social Security Act is not invalid as a plan and scheme on the part of Congress to coerce the surrender by the states of the construction, operation and methods of administration of the laws of the states.

9. The Court erred in holding that the Social Security Act is not invalid as taking the property of claimant and other employers for the benefit of an arbitrarily defined class, contrary to the 5th Amendment.

10. The Court erred in holding that the taxes imposed by the Social Security Act are taxes for the accomplishment of constitutional purposes.

11. The Court erred in holding that the Social Security Act is not invalid as a delegation of legislative power to the Social Security Board.

Wherefore, for the errors assigned aforesaid, the plaintiff, Chas. C. Steward Machine Company, a corporation, prays that the judgment and decree of this court heretofore

rendered in this cause be in all things reversed and the cause remanded as may appear meet.

Borden Burr, Wm. Logan Martin, Walter Bouldin,
Attorneys for Plaintiff.

[fol. 20] IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL—Filed March 11, 1937

The petition of the plaintiff, Chas. C. Steward Machine Company, a corporation, praying an appeal from the judgment and decree entered in this cause on March 11th, 1937, sustaining defendant's demurrer to the complaint and dismissing the cause being now presented in open court during the term in which such judgment and decree were rendered, together with plaintiff's assignment of errors, it is hereby ordered that said papers be filed, and it is further ordered:

1. That the appeal be allowed to the United States Circuit Court of Appeals for the Fifth Circuit as prayed and that the transcript of such part of the record and proceedings as the parties may by præcipe duly designate, be transmitted duly authenticated to the United States Circuit Court of Appeals for the Fifth Circuit at New Orleans in the manner provided by law.

2. That plaintiff file security for costs, approved by this Court, for the sum of $500.00, or deposit such sum in cash with the clerk of this Court.

3. That a citation be issued admonishing the defendant to be in the United States Circuit Court of Appeals for the Fifth Circuit on or before thirty days from the date of this order.

Done, ordered and signed, this March 11th, 1937.

David J. Davis, United States District Judge.

[fols. 21-22] Bond on Appeal for $500.00, approved and filed March 11, 1937, omitted in printing.

[fol. 23] IN UNITED STATES DISTRICT COURT

APPELLANT'S PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed March 11, 1937

To the Clerk of the District Court of the United States for the Southern Division of the Northern District of Alabama:

The plaintiff in the above styled cause is prosecuting an appeal to the United States Circuit Court of Appeals for the Fifth Circuit and will be designated in that court as the appellant. The plaintiff requests you to prepare a transcript of the record in the above styled cause for the United States Circuit Court of Appeals pursuant to an appeal allowed in said cause and that you also include in such transcript the following documents, pleadings and proceedings filed and to be filed in such cause, to-wit:

1. Complaint filed March 10, 1937.
2. Defendant's demurrer filed March 10, 1937.
3. Order of court sustaining demurrer and dismissing use made and entered on March 11, 1937.
4. Petition for appeal.
5. Assignment of errors.
6. Order allowing appeal made and entered March 11, 1937.
7. Appeal bond.
8. Citation of appeal.

[fol. 24] 9. Appellant's præcipe.

Dated this March 11th, 1937.

Borden Burr, Wm. Logan Martin, Walter Bouldin,
Attorneys for Plaintiff.

I, Walter Bouldin, hereby certify that on March 11th, 1937 I served a copy of the above and foregoing præcipe upon Honorable Jim C. Smith, Counsel for Appellee, in said cause.

Walter Bouldin.

[fol. 25] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 26] That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

[fol. 27] JOINT STIPULATION OF COUNSEL AS TO SUBMISSION OF CASE AND AS TO BRIEFS—Filed March 12, 1937

IN THE UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

No. 8410

CHAS. C. STEWARD MACHINE COMPANY, a Corporation, Appellant,

versus

HARWELL G. DAVIS, Individually and as Collector of Internal Revenue for the District of Alabama, Appellee

Appeal from the District Court of the United States for the Southern District of Alabama

Stipulation

In the above entitled case, by leave of Court first had and obtained, it is stipulated as follows:

1. Said case and appeal shall be and is submitted this day without argument.

2. Appellant by reference files and submits as its brief herein: (a) The briefs heretofore filed by plaintiffs in case No. 8321 in this court, in which Beeland Wholesale Company et al. were plaintiffs and Harwell G. Davis, Individually and as Collector of Internal Revenue for the District of Alabama, was defendant; (b) the briefs heretofore filed by plaintiffs in case No. 8323 in this court, in which Alpha Portland Cement Company, a corporation, et al., were plaintiffs, and Harwell G. Davis, Individually and as Collector of Internal Revenue for the District of Alabama, et al., were defendants.

3. Appellee files and submits as his brief herein, the briefs filed by the Commissioner of Internal Revenue in the case of George P. Davis, plaintiff, against Boston and Maine Railroad Company, defendant, in the District Court

of the United States for the District of Massachusetts, and such other memoranda of authorities as is desired.

(Signed) Borden Burr, (Signed) Walter Bouldin, Attorneys for Appellant. (Signed) J. T. Jackson, Attorneys for Appellee.

[fol. 28] Submission of Case

Extract from the Minutes of March 12th, 1937

No. 8410

Chas. C. Steward Machine Company, a Corporation,

versus

Harwell G. Davis, Individually and as Collector of Internal Revenue, for the District of Alabama

On this day, pursuant to the joint stipulation of counsel, the above entitled and numbered cause was taken under submission by the Court.

[fol. 29] Opinion of the Court—Filed March 20, 1937

In the United States Circuit Court of Appeals for the Fifth Circuit

No. 8410

Chas. C. Steward Machine Company, a Corporation, Appellant,

versus

Harwell G. Davis, Individually and as Collector of Internal Revenue for the District of Alabama, Appellee

Appeal from the District Court of the United States for the Northern District of Alabama

(March 20, 1937)

Before Foster, Sibley and Holmes, Circuit Judges

Sibley, Circuit Judge:

The Charles C. Steward Machine Company sued the Collector of Internal Revenue to recover a tax of $46.14 col-

lected from it as the employer of more than eight persons during the year 1936, by virtue of Title IX of the Social Security Act, 49 Stats. 639. The tax is alleged to have been wrongfully and illegally assessed and collected because the Social Security Act is unconstitutional and void for reasons in brief as follows:

1. The Act in purpose and effect coerces the enactment [fol. 30] by the States of unemployment compensation laws.

2. It violates the Ninth and Tenth Amendments of the Constitution by setting up a federal system of unemployment compensation by controlling the administration of the State statutes and the moneys raised under them, thus intruding on the constitutional power and jurisdiction of the States.

3. By the system so created the property of the employers is taken without just compensation for the benefit of an arbitrarily defined class.

4. The taxes imposed under the Act are not for revenue to support the Government for constitutional purposes, but for the purpose of providing funds to support State administrations in matters beyond the province of the Congress to control.

5. The Act violates Article 1, Section 1 of the Constitution by investing legislative authority in the Social Security Board in its stated activities. Refusal of an application for refund based on the same grounds was alleged. The District Court sustained a general demurrer and dismissed the suit.

The question whether the tax is in conflict with the Constitution is thus presented, uncomplicated by the question of a remedy in equity on which the decision in Beeland Wholesale Co. vs. Davis, Collector, — Fed. (2d) —, mainly went. Mindful of the established rule that a court will enquire into the constitutionality of a statute only when and to the extent that the case before it requires entry upon that duty, we are of opinion that we need not consider the Social Security Act as a whole. The Act deals with a number of subject matters, somewhat related but separately regulated. It contains ten broad divisions or titles which might have been made separate Acts. At the end is Section

1103: "If any provision of this Act or the application thereof to any person or circumstance is held invalid the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected [fol. 31] thereby." The tax here disputed is laid under Title IX headed: "Tax on Employers of Eight or More." Its provisions are workably complete within themselves, and we need critically to examine them only. The first section in the Title enacts that "On and after January 1st, 1936, every employer (defined in Section 907) shall pay for each calendar year an excise tax with respect to having individuals in his employ, equal to the following percentages of the total wages, etc." Section 905 provides that the taxes imposed shall be collected through usual channels and by usual procedure; and "shall be paid into the Treasury of the United States as internal revenue collections." They enter the Treasury as free funds set apart to no special use and subject to be applied to any congressional appropriation. One of the purposes of the Social Security Act, as stated in its caption is "to raise revenue." It originated in the House of Representatives as a revenue measure should. The Constitution, Art. 1, § 8, names as the first power of Congress "To lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States.' The employment of another is such a transaction as may be the basis of an excise tax. The power of Congress in imposing excise taxes has been said to be subject only to the limitation that they be for the public welfare and be uniform throughout the United States. Flint vs. Stone-Tracy Co., 220 U. S. 110. A court should have strong reasons to conclude either that this is not a true excise tax to raise revenue, or that Congress did not intend it to be collected if some appropriation or other provision elsewhere in the Act should fail. The appropriations are not of the proceeds of this tax or of any particular fund, but are general appropriations from the Treasury. No appropriation corresponds in amount with or is offset by this tax so as to justify a court in regarding the two as vitally joined in spite of the separability section of the Act.

[fol. 32] There is, however, in the provisions of Title IX touching credits against the tax matter which ties these credits to Title VIII creating the Social Security Board,

and to Title III making grants to assist the States in the administration of their unemployment relief laws. Section 902 allows a taxpayer to take credit up to ninety per cent of his tax for contributions which he has made to an unemployment fund under the laws of his State if those laws have been certified by the Social Security Board as conforming to certain standards specified in Section 903.* If the Social Security Board and its function be unconstitutional, as is earnestly argued and as earnestly denied, the immediate effect would seem to be to render the credit impossible but to leave the full tax to be collected from everyone. Notwithstanding the separability section of the Act it might be a serious question whether or not Congress would have enacted the tax without the credit provisions. It does not appear whether or not the present plaintiff obtained credit by complying with the Alabama Unemployment Insurance Act, which we judicially know has been passed and certified by the Social Security Board. The plaintiff does not complain of having been denied a credit. It may not be in position to attack the provisions for a credit of which it has taken advantage. But we prefer not to be technical, and to consider the tax in connection with the credit provisions which link it with unemployment relief.

For many years and in numerous instances Congress has recognized with complete public acquiescence that calamities such as floods, droughts, earthquakes and pestilences which though local exceed the resources of local government to meet, are matters affecting the general welfare of the United States, touching which its power to tax and the correlative power to spend may be exercised. The recent [fol. 33] countrywide distress due largely to industrial unemployment has caused federal expenditure of billions, largely borrowed. Still it remains true that the relief of such conditions is primarily the duty and burden of the several States. These two interacting responsibilities we think are the key to the legislation under scrutiny. To refill the federal treasury and also to encourage the States to assume for the future their proper burden this tax with its credit scheme has been devised. There is in it no undue coercion or compulsion on the States. If they do not enact

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* We do not consider the credits under Sections 909 and 910 since they are not yet operative.

laws to meet the future need the federal tax is to be collected in full to reimburse the federal treasury and to provide means for it to aid if necessary in the future. If the States arrange to carry their burden in the future by collecting funds for the purpose, the Congress, being relieved to that extent within those States, permits to be credited the contributions made by the taxpayers there, both in order to relieve them of a double load and as an acknowledgment of the potential benefit to the federal treasury produced by their local contributions.

In Articles III and IX taken together Congress recognizes that the subject of unemployment relief by insurance or otherwise is primarily a matter for the States, but that by reason of recent experience the federal treasury is also involved, and that its reasonable protection is part of the general welfare in a constitutional sense. Grants to aid State agencies whose operations will tend to protect the federal treasury are thus justified. Such are grants to State educational institutions which will teach the military art and thus serve a federal need if Congress should have to raise an army. So the grants to States to improve their public roads assist also the federal function of establishing postroads, and the roads may serve military purposes in time of war. The policy of such grants and the fixing of [fol. 34] their conditions and amount is for legislative, not curial, judgment. The tax here in issue is calculated to raise more money than is appropriated to aid State administrations even if all the States establish them, and the net result of it will be to put money into the Treasury as well as to aid federally protective State activities.

The conditions of the credit, as fixed by Title IX, Section 903 and to be judged of by the Board, are not without sound, discernible reasons. If the federal treasury is to be effectively protected by the State contributions, these contributions must be safely kept and must be of such incidence and such distribution as will fairly insure the results sought. To have the money put into the hands of the Secretary of the Treasury for investment in United States securities tends to safety, and may check unfavorable tendencies in the financial and banking world when unemployment comes to be relieved by the liquidation of the investments. It also affords another market for federal loans. Other details we do not find to be arbitrary. The Social Security Board acts

as a sort of commission to administer and apply the Act so as to secure its outlined purposes and prevent misuse of the generous credit.

The credit is not a penalty or coercion on the taxpayer. If his State has no unemployment relief law his not getting the credit is not a punishment for any act of his. Not having contributed through his State to meet the unemployment peril he merely contributes fully through the federal government. As an employer he contributes about the same whether his State does or does not have an unemployment [fol. 35] relief law. This equalization of the burden also tends to enable the States to pass such laws without exposing their citizen employers to a difficult business competition with employers in States which have none. There is thus a relief to the States from an embarrassment in their legislation on these lines, which frees rather than coerces them.

Whether in practical effect the credit device which depends on State differences deprives the tax of the territorial uniformity throughout the United States which the Constitution requires in an excise tax is a question not pleaded or argued here, but see Florida vs. Mellon, 273 U. S. 12. Nor is the question of requiring tax of employers of eight but not of employers of seven. This distinction was held to be without discoverable reason with relation to the unemployment insurance set up by the Alabama State Unemployment Insurance Law, and to deny equal protection both to employers and employes; Gulf States Paper Corporation vs. Carmichael, Attorney General, recently decided by a three-judge court in the Middle District of Alabama. An appeal is pending, and the conclusion was disapproved by the Supreme Court of Massachusetts in Howes Bros. Co. vs. Unemployment Commission, — Mass. —. But the statute before us is not a State law resting on the police power which under the Fourteenth Amendment must afford equal protection. It is a tax law of the United States to which that requirement does not apply. Congress had the right to look to mere bigness in laying the tax, and to exempt smaller payrolls as not worth pursuing. LaBelle Iron Works vs. United States, 256 U. S. 377; Bromley vs. McCaughn, 280 U. S. 124; Flint vs. Stone-Tracy Co., 220 U. S. 108.

Since we hold the exaction to be a tax, there is no room for the contention that private property has been taken for public use without just compensation. The general benefits of government are the compensation for all takings [fol. 36] through taxation. We think the tax and its credit are to be upheld as against the attack here made. The judgment is

Affirmed.

[fol. 37] JUDGMENT

Extract from the Minutes of March 20, 1937

No. 8410

CHAS. C. STEWARD MACHINE COMPANY, a Corporation,

versus

HARWELL G. DAVIS, Individually and as Collector of Internal Revenue for the District of Alabama

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Alabama, and was taken under submission by the Court upon the record and briefs on file;

On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

[fol. 38] CLERK'S CERTIFICATE

UNITED STATES OF AMERICA:

UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

I, Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 26 to 37 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, num-

bered 8410, wherein Chas. C. Steward Machine Company, a corporation, is appellant, and Harwell G. Davis, Individually and as Collector of Internal Revenue, for the District of Alabama, is appellee, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 25 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said United States Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 20th day of March, A. D. 1937.

Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals, Fifth Circuit. (Seal United States Circuit Court of Appeals, Fifth Circuit.)

[fol. 39] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed March 29, 1937

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted, and the case is assigned for hearing immediately following Nos. 724 and 797.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 41,377. U. S. Circuit Court of Appeals, Fifth Circuit. Term No. 837. Chas. C. Steward Machine Company, petitioner, vs. Harwell G. Davis, Individually and as Collector of Internal Revenue. Petition for a writ of certiorari and exhibit thereto. Filed March 26, 1937. Term No. 837, O. T., 1936.

FILE COPY

FILED
MAR 26 1937
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936.

No. 837

CHAS. C. STEWARD MACHINE COMPANY,
A CORPORATION,
Petitioner,

vs.

HARWELL G. DAVIS, INDIVIDUALLY AND AS COLLECTOR OF INTERNAL REVENUE.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BORDEN BURR,
WALTER BOULDIN,
WM. LOGAN MARTIN,
Counsel for Petitioner.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936.

No. 837

CHAS. C. STEWARD MACHINE COMPANY,
A CORPORATION,

Petitioner,

vs.

HARWELL G. DAVIS, INDIVIDUALLY AND AS COLLECTOR OF INTERNAL REVENUE,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

To the Honorable the Supreme Court of the United States:

Your petitioner, Chas. C. Steward Machine Company, an Alabama corporation, files this its petition for writ of certiorari and respectfully shows:

A.

Summary Statement of Matter Involved.

Petitioner on March 2, 1937, paid to Harwell G. Davis, as Collector of Internal Revenue for the District of Alabama, the respondent herein, the sum of $46.14, as a tax

imposed on petitioner under the terms of the Social Security Act (42 U. S. C. A., §§1101-2). On the date of payment petitioner filed in due form with the respondent his claim for refund of tax so paid, setting out the grounds on which such claim was based (R. 9-11). On March 9 the Commissioner of Internal Revenue rejected such claim in full (R. 12). On March 10 petitioner filed a suit at law in the District Court of the United States for the Southern Division of the Northern District of Alabama against respondent to recover from the latter the sum of $46.14 which petitioner had so paid to him. The grounds on which petitioner based his suit were as follows:

1. The plan and scheme set up by Congress in the Social Security Act (herein sometimes called the Federal Act) has for its purpose and effect the enactment of unemployment compensation laws by the States, which are not the voluntary acts of the governments of the States, but which are brought about by the coercion and compulsion of the Federal Act.

2. Such plan and scheme violate the 9th and 10th Amendments to the Constitution of the United States in that Congress, through the Federal Act, undertakes to set up a Federal system of unemployment compensation in order to engage in the regulation of matters with which it is not concerned under the Constitution and which are wholly within the power and jurisdiction of the States to regulate. Under such plan and scheme the States surrender control of the monies collected from their citizens and attempt to surrender to the United States effectual control of the construction, operation and methods of administration of the laws of the States.

3. Under the pretext of exercising its powers, Congress, by the Federal Act, undertakes to effectuate an end which

is inconsistent with the limited grants of power to Congress in order to bring about a system of unemployment compensation, which is a matter reserved to the States or to the people thereof.

4. Under the system created by the Federal Act and the State acts enacted under the coercion thereof, the property of claimant and other employers is taken for the benefit of an arbitrarily defined class without the payment of just compensation to claimant and such other employers.

5. The taxes imposed under the Federal Act are not taxes creating revenue for the support of the Government in the accomplishment of its constitutional purposes, but are imposed for the purpose of providing funds for disbursement in the administration of State laws relating to matters beyond the control of Congress and which the Federal Act coerces and compels the States and the people thereof to enact.

6. The Federal Act violates Article I, Section 1, of the Constitution in that it attempts to vest in the Social Security Board power to determine what sums shall be paid out of the Treasury of the United States for the administration of State unemployment compensation laws without fixing any legal standards whereby the amounts to be paid to any State can be determined except by the exercise of discretion legislative in character and extent.

The cause was submitted in the District Court on March 11 on the demurrer of the respondent which set out in substance that the taxes paid by petitioner were imposed under the Constitution of the United States and were legal, valid and constitutional; that the facts stated in petitioner's complaint did not constitute a cause of action, and were mere conclusions of the pleader; did not warrant a judg-

ment by the court against the respondent and in favor of petitioner and that the respondent in so collecting the tax from the petitioner was performing his duties under the provisions of the Federal Act and under the direction of the Commissioner of Internal Revenue. The District Court on March 11 sustained respondent's demurrer and dismissed petitioner's cause (R. 16). On the same date the petitioner prayed for and was granted an appeal (R. 17, 20). The record was duly filed in the United States Circuit Court of Appeals for the Fifth Circuit at New Orleans on March 12, being cause No. 8410 on the docket of that court, and was submitted to the court on the same date. The Court of Appeals on March 20 affirmed the judgment of the District Court (R. 33).

B.

Reasons Relied on for the Allowance of the Writ.

1. The validity of the Social Security Act has not been, but should be settled by this Court. There is great public interest in the prompt settlement of this question. In the operation of the Federal-State system for the first year a total sum in excess of $200,000,000 will be imposed throughout the United States in the form of State contributions and Federal taxes.[1] This amount will be trebled the third year. The validity of the laws of twenty-nine States is made to depend on the validity of the Federal Act, such State laws providing that if Title IX, or in some instances if the Federal Act, becomes inoperative or is declared invalid by the Supreme Court of the United States, the entire State act shall be no longer operative. Until this Court determines

---

[1] House Report No. 615, 74th Congress, 1st Session (April 5, 1935), page 15, Table XI; Senate Report No. 628, Ib. (May 13, 1935), page 27, Table XII.

this question employers of eight or more throughout the United States are burdened not only with the taxes imposed by such system but also with highly burdensome accounting and administrative problems.

An examination of the history of the Federal Act (Brief of Petitioner, p. 6) from its origin at the hands of the President's Committee on Economic Security, through committee hearings and debates in Congress, is convincing that Congress in its entire history has passed no act which reaches so far into the local affairs of the State and which to such an extent coerces and compels the States to adopt the system provided for them by Congress. The Agricultural Adjustment Act coerced the citizen; the Social Security Act compels the State to comply with the demands of Congress.

2. The Circuit Court of Appeals for the Fifth Circuit has, in the case in which this petition is filed, upheld the validity of the Federal Act in a way which is probably untenable and in conflict with the decisions of the Supreme Court in the cases of *Hammer* v. *Dagenhart*, 247 U. S. 251, 275 (62 L. Ed. 1101, 1107); the *Child Labor Tax Case*, 259 U. S. 20, 39-40 (66 L. Ed. 817, 820-21); *Hill* v. *Wallace*, 259 U. S. 44, 66 (66 L. Ed. 822, 829); *Schechter Poultry Corporation* v. *United States*, 295 U. S. 495, 546, 548, 550 (79 L. Ed. 1570, 1588-91); *United States* v. *Butler et al.*, 297 U. S. 1, 58-9, 61, 68, 70, 73-4 (80 L. Ed. 477, 484-6, 489-90, 492); *Carter* v. *Carter Coal Company*, 298 U. S. 238, 288-9, 294-7 (80 L. Ed. 1160, 1177, 1180-1); *Railroad Retirement Board* v. *Alton Railroad Company*, 295 U. S. 330, 350, 354, 356, 361, 374 (79 L. Ed. 1468, 1476, 1478-9, 1482, 1489).

3. The Federal Act became a law on August 14, 1935. The State of Alabama enacted its Unemployment Compensation Law (hereinafter called the Alabama Act) on September

14, 1935.[2] Approximately 689 employers have joined as plaintiffs or have participated as intervenors in suits pending in the Federal and State courts to enjoin the payment of the taxes imposed under the Alabama Act on the ground of lack of an adequate remedy at law, and have secured temporary relief which is (on this March 22) still effective The taxes imposed were required to be deposited with the registry of the respective courts or in banks by court order, which was and continues to be done by the plaintiffs and intervenors. There is at present on deposit awaiting final decision as to the validity of the Alabama Act and the Federal Act a sum in excess of $2,000,000.

On appeal to the Supreme Court of Alabama from a ruling on demurrer by the trial court, the Supreme Court on March 18, 1937, held valid both the Federal Act and the Alabama Act. Applications for rehearings will be filed and certificates of affirmance (probably) withheld until the disposition of such applications.

4. On submission of two cases to a statutory court of three judges under 28 U. S. C. A. 380, that court on December 15, 1936, found the Alabama Act in conflict with the Constitutions of the United States and of Alabama. Thsse cases are on the docket of the Supreme Court to be heard on April 7, 1937.[3]

---

[2] Thirty-seven other states have enacted unemployment compensation laws patterned substantially as is the Alabama Act. Those of Massachusetts, New York and California have been upheld: *Howes Bros. Co.* v. *Unemployment Compensation Commission* (Mass.), 5 N. E. (2d) 720, decided December 31, 1936; *Chamberlain* v. *Andrews*, 271 N. Y. 1, 2 N. E. (2d) 22, aff'd. by equally divided Supreme Court, November 23, 1936; *Gillum* v. *Johnson* (Calif.), 62 Pac. (2d) 1037. The Federal Act has been upheld in the following cases: *Davis* v. *Boston and Maine Railroad* (Dist. Ct. Mass.), decided December 7, 1936; *Howes Bros. Co.* v. *Unemployment Compensation Commission, supra; Gillum* v. *Johnson, supra; Beeland Wholesale Co. et al.* v. *Davis* (Dist. Ct. Middle Dist. Ala.), affirmed C. C. A. 5th Circuit, February 16, 1937, petition for writ of certiorari pending in the Supreme Court.

[3] *Gulf States Paper Corporation* v. *Carmichael et al.* and *Southern Coal & Coke Company* v. *Carmichael et al.*

5. Because of conflicting rulings of different courts there exists so much confusion and uncertainty that it is difficult if not impossible for approximately five thousand taxpayers in the State of Alabama to determine what action to take. It is contended by the taxpayers in the cases pending in the Federal and State courts in Alabama that if the Federal Act be declared invalid no adequate remedy at law exists for the return of the contributions made by them under the Alabama Act. The Alabama taxpayers are likewise confronted, until the constitutionality of the Federal Act is determined by this Court, with the problem of making a double payment of an amount equal to ninety per cent of the excise tax imposed by Section 1101 of the Federal Act.

WHEREFORE, petitioner respectfully prays that this Court pursuant to Section 240 of the Judicial Code as amended (28 U. S. C. A., § 347 (a)) issue a writ of certiorari to the Court of Appeals for the Fifth Circuit, directing that court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket No. 8410, *Chas. C. Steward Machine Company, Appellant,* v. *Harwell G. Davis, Individually and as Collector of Internal Revenue, Appellee;* to the end that such cause may be reviewed and determined by this Court as provided by the statutes of the United States; and that the judgment herein of the Circuit Court of Appeals be reversed by this Court.

(A supporting brief is filed separately.)

BORDEN BURR,
WALTER BOULDIN,
WM. LOGAN MARTIN,
Attorneys for Petitioner.

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IN THE

Supreme Court of the United States

OCTOBER TERM 1936

No. 837

CHAS. C. STEWARD MACHINE COMPANY,
Petitioner,

v.

HARWELL G. DAVIS, Individually and as Collector of Internal Revenue,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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Birmingham, Alabama.

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I.

OPINION OF THE COURT OF APPEALS

The opinion of the Court of Appeals for the Fifth Circuit is contained in the record (p. ——).

II.

JURISDICTION

The statutory provision sustaining the jurisdiction of the Court is contained in 28 U. S. C. A., § 347 (a). The

Circuit Court of Appeals on March 20, 1937 affirmed the decision of the District Court of the United States for the Southern Division of the Northern District of Alabama, dismissing petitioner's bill of complaint, in which petitioner had sought a judgment against the collector of internal revenue of Alabama, for $46.14, which petitioner had paid the collector as a tax imposed by the Social Security Act of Congress (herein called the Federal Act). (42 U.S.C.A., § 301, et seq.)

III.

STATEMENT OF THE CASE

Petitioner adopts as a statement of facts the Summary Statement of Matter Involved as set out in the petition for the writ (p. 1).

IV.

ERRORS OF THE COURT BELOW WHICH ARE RELIED ON IN THE PETITION

The Court below affirmed the judgment of the District Court, and in its opinion decided, among other things, the following:

(a) Title IX is complete in itself and is separable from the remainder of the Act. The appropriation of $49,000,000 in Title III does not correspond with the tax raised under Title IX so as to justify the court in regarding the two as vitally joined in spite of the separability section (1103).

(b) If the Social Security Board and its function (fixed under Title VII) be unconstitutional, the im-

mediate effect would be to render the credit impossible and leave the full tax to be collected.

(c) The tax and credit scheme has been devised by Congress for the purpose of refilling the treasury (in respect to the recent expenditure by the United States of several billions for relief, the primary duty and burden of which rests on the several states) and of encouraging the states to assume for the future their proper burden.

(d) There is in the Federal Act no undue coercion or compulsion on the state.

(e) While the subject of unemployment is admittedly a matter primarily for the states, the recent experience of the federal treasury in providing relief funds is also involved, and the reasonable protection of the treasury is part of the general welfare in a constitutional sense. Thus grants to aid state agencies (under Title III) whose operation will tend to protect the federal treasury are justified.

(f) The tax is calculated to raise more money than is appropriated to aid state administrations even if all the states establish them, and the net result of it will be to put money into the federal treasury as well as to aid federally protective state activities.

(g) The credit is not a penalty or coercion on the taxpayer.

(h) The imposition of the tax on employers of eight or more does not deny due process or take property without just compensation.

V.

ARGUMENT

The facts stated in the bill of complaint as justifying a judgment against the respondent are that petitioner had paid the respondent the sum of $46.14 as a tax on employers of eight or more and as required by Section 1101 of the Federal Act. This tax was one-tenth of one per cent. of the amount of wages paid by petitioner to its employees during the year 1936.[1]

As summarized by the Court of Appeals in its opinion the petitioner sought recovery on the ground that the Federal Act was unconstitutional and void for the following reasons:

1. The Federal Act in purpose and effect coerces the enactment by the states of unemployment compensation laws.

2. It violates the Ninth and Tenth Amendments of the Constitution by setting up a federal system of unemployment compensation by controlling the administration of the state statutes and the moneys raised under them, thus intruding on the constitutional power and jurisdiction of the states.

3. By the system so created the property of the employers is taken without just compensation for the benefit of an arbitrarily defined class.

4. The taxes imposed under the Act are not for revenue to support the Government for constitutional pur-

---

[1]The Alabama Unemployment Compensation Law (General Acts 1935, page 950) imposed on petitioner for the same period a like tax of nine-tenths of one per cent., which petitioner paid and for which he received credit (Federal Act, Sec. 1102) before paying to the respondent the tax which is the basis of this suit.

poses, but for the purpose of providing funds to support state administrations in matters beyond the province of the Congress to control.

5. The Act violates Article I, Section 1 of the Constitution by investing legislative authority in the Social Security Board in its stated activities.

It is the position of petitioner that the foregoing averments in the bill of complaint are adequately supported both by the provisions of the Act and the history of its origin and passage. That repetition may be avoided we beg leave to refer to brief heretofore filed in support of petition for writ of certiorari in the case of *Beeland Wholesale Company, et al. v. Davis,* No. 802, now pending in this Court, wherein we have set out, perhaps at too great length for this purpose, an analysis of the pertinent features of the Act and a summary of the history of the times and general purposes of the legislation as indicated in messages of the President, hearings before committees and statements made in debate on the floor of Congress. We adopt for the purposes of this brief subjects 5 and 6 found on pages 12-39 of the brief in No. 802, which we respectfully invite to the attention of the Court and of which we ask the Court's consideration.

Respectfully submitted,

BORDEN BURR,

WALTER BOULDIN,

WM. LOGAN MARTIN,
Attorneys for Petitioner.

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IN THE

Supreme Court of the United States

OCTOBER TERM 1936

No. 837

CHAS. C. STEWARD MACHINE COMPANY,
Petitioner,

v.

HARWELL G. DAVIS, Individually and as Collector of Internal Revenue,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS OF THE FIFTH CIRCUIT

BRIEF FOR PETITIONER

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IN THE

Supreme Court of the United States

OCTOBER TERM 1936

No. 837

CHAS. C. STEWARD MACHINE COMPANY,
Petitioner,

v.

HARWELL G. DAVIS, Individually and as Collector of Internal Revenue,
Respondent.

BRIEF FOR THE PETITIONER

OPINION BELOW

The opinion of the Circuit Court of Appeals has not been reported. It is contained in the record (p. 27).

JURISDICTION

The judgment of affirmance below was rendered on March 20, 1937 (R.33). Petition for writ for certiorari was filed March 22, and was granted March 29, 1937. The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code as amended (44 Stat. 938).

QUESTION PRESENTED

Does the action of Congress in undertaking to impose taxes by TITLE IX of the Social Security Act (49 Stat. 620, 639) upon the petitioner constitute a valid exercise of the powers of Congress under the Constitution?

STATUTES INVOLVED

TITLES III, VII and IX of the Social Security Act (herein called the Federal Act) are necessarily involved in the determination of the validity of the taxes sought to be recovered by the petitioner. An analysis of these TITLES is found on pp 9-13 herein.

STATEMENT

The petitioner, an Alabama corporation with its principal place of business at Birmingham, Alabama, having paid a tax of $46.14 imposed on it by Section 901 of the Federal Act for the period from January 1 to December 31, 1936, filed with respondent his claim for refund (R. 9) which the Commissioner of Internal Revenue denied (R. 12). Petitioner then filed its bill of complaint in the District Court (R. 1) claiming of the Collector of Internal Revenue for the collection district of Alabama the sum of $46.14, which the petitioner had so paid. In its complaint petitioner averred that the Federal Act is unconstitutional and invalid, and that the tax was wrongfully and illegally assessed and collected by the respondent for the following reasons:

1. The plan and scheme set up by Congress in the Federal Act has for its purpose and effect the enactment of unemployment compensation laws by the states, which are not the voluntary acts of the governments of the states, but

which are brought about by the coercion and compulsion of the Federal Act.

2. Such plan and scheme violate the 9th and 10th Amendments to the Constitution of the United States in that Congress, through the Federal Act, undertakes to set up a Federal system of unemployment compensation in order to engage in the regulation of matters with which it is not concerned under the Constitution and which are wholly within the power and jurisdiction of the states to regulate. Under such plan and scheme the states surrender control of the monies collected from their citizens and attempt to surrender to the United States effectual control of the construction, operation and methods of administration of the laws of the states.

3. Under the pretext of exercising its powers, Congress, by the Federal Act, undertakes to effecuate an end which is inconsistent with the limited grants of power to Congress in order to bring about a system of unemployment compensation, which is a matter reserved to the states or to the people thereof.

4. Under the system created by the Federal Act and the state acts enacted under the coercion thereof, the property of petitioner and other employers is taken for the benefit of an arbitrarily defined class without the payment of just compensation to petitioner and such other employers.

5. The taxes imposed under the Federal Act are not taxes creating revenue for the support of the Government in the accomplishment of its constitutional purposes, but are imposed for the purpose of providing funds for disbursement in the administration of state laws relating to matters beyond the control of Congress and which the Federal Act

coerces and compels the states and the people thereof to enact.

6. The Federal Act violates Article I, Section 1, of the Constitution in that it attempts to vest in the Social Security Board power to determine what sums shall be paid out of the Treasury of the United States for the administration of state unemployment compensation laws without fixing any legal standards whereby the amounts to be paid to any state can be determined except by the exercise of discretion legislative in character and extent.

The respondent demurred to the petitioner's complaint (R. 13), setting up the validity of the tax complained of. The District Court sustained the petitioner's demurrers and dismissed the cause (R. 16). Petitioner appealed to the Circuit Court of Appeals, and that Court on March 20, 1937 affirmed the judgment of the District Court (R. 33).

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

(1) In holding that the taxes imposed by TITLE IX constitute a valid exercise of the taxing power of Congress.

(2) In affirming the judgment of the District Court.

The petitioner also urges that the Circuit Court of Appeals further erred in holding:

(3) That TITLE IX is complete in itself and is separable from the remainder of the Act.

(4) That the appropriation of $49,000,000 in TITLE III does not correspond with the tax raised under TITLE IX so as to justify the Court in regarding the two as vitally joined in spite of the separability section (Section 1103).

(5) That if the Social Security Board and its function (fixed under TITLE VII) be unconstitutional, the immediate effect would be to render the credit impossible and leave the full tax to be collected.

(6) That the tax and credit scheme has been devised by Congress for the purpose (a) of refilling the treasury (in respect to the recent expenditure by the United States of several billion dollars for relief, the primary duty and burden of which rests on the several states) and (b) of encouraging the states to assume for the future their proper burden.

(7) That there is in the Federal Act no undue coercion or compulsion on the state.

(8) That while the subject of unemployment is admittedly a matter primarily for the states, the recent experience of the federal treasury in providing relief funds is also involved, and the reasonable protection of the treasury is part of the general welfare in a constitutional sense, as a result of which grants are justified to aid state agencies (under TITLE III) whose operation will tend to protect the federal treasury.

(9) That the tax is calculated to raise more money than is appropriated to aid state administrations even if all the states establish them, and the net result of it will be to put money into the federal treasury as well as to aid federally protective state activities.

(10) That the credit is not a penalty or coercion on the taxpayer.

(11) That the imposition of the tax on employers of eight or more does not deny due process or take property without just compensation.

SUMMARY OF ARGUMENT

The Federal Act is so lacking in precedent that our argument is to a large extent devoted to the history of the legislation in order to show that Congress seized on the taxing power merely as a pretext to provide this plan for unemployment. In the history of the Act, from its inception in the President's message to its final passage, there are no important questions overlooked. The measure does not contain ten titles without a purpose; it was to force the exploration of new fields along with the old; to prevent the defeat of new measures at the hands of Congress which they may have suffered if not propped up by grants for the blind, for crippled children, for public health.

TITLES III and IX were for the purpose of taking care of the unemployed "through no fault of their own"; of providing for the man who had lost his job without requiring the means test; of maintaining wage levels; of bringing about an equitable distribution of income; of stimulating a more intelligent stabilization of industry and of providing more security for the workers.

This is no mean undertaking. But from what source does the Federal Government derive the power it now assumes? Who is to provide this security for the worker? The Government? No. The public generally? No. The employer is to carry the burden. The benefit he derives is the opportunity to select his labor from the newly created pool which exists on cash benefits. It is true that the employer has to a greater or less degree never lacked this opportunity before; now it costs him $200,000,000 the first year and $900,000,000 the third year.

The plan itself is ingenious admittedly. Congress lacks the power to establish the complete system of contribution and

benefits. Sadly, the proponents of the measure faced that reality. A prior senate committee in 1932 had held such an undertaking unconstitutional (Senator Wagner dissenting). Now some "device" must be found which will skirt the courts. The states must be "stimulated" to provide their part of the system. The costs of doing business in all the states must be equalized. Competition among the states must be levelled. The tax-credit device is the plan. If the state is recalcitrant, its employers pay their taxes anyhow, and they are spent in other states. If the states follow (as forty-two have) they may keep ninety per cent of the tax. The remaining ten per cent. is necessary for administration of the system from Washington.

Singularly enough, if the measure succeeds in raising revenue for the treasury, it fails in its purposes! For that means that the states do not bend under the federal yoke. How can this be done within the limits of federal power was the question that constantly arose, a ghostly visitor at the committee table. Separate the two acts; put the spending part in a different dress from the taxing feature. Remove it from attack. Lessons are to be learned from experience. The case of *United States v. Butler*[1] had been decided by the District Court in Boston on October 19, 1934 and gave some support to the proponents of the measure. The committees were hearing witnesses from January 21 to February 20, 1935. *Panama Refining Co. v. Ryan*[2] had been decided on January 7. The report of the Committee on Ways and Means was made on April 5. Its timidity in support of the constitutionality of the measure was marked. The House passed the bill on April 19. The case of *Railroad Retirement Board v. Alton*[3] had been decided on May 6. The Senate Committee

1 297 U. S. 180 L. ed. 477)
2 293 U. S. 388 (79 L. ed 446)
3 295 U. S. 330 (79 L. ed. 1468)

reported the bill out with amendments on May 20. Before it came on for debate in the Senate *Schechter Poultry Corporation v. United States*[1] was announced on May 27. These decisions should have carried the lesson of constitutionality, but they failed to do so.

As a device the two-way system was adopted. No one could raise the validity of the tax. No one could question an appropriation. The tax club was sufficient to drive the states into line. The few standards surrounding the grants would be sufficient to assure control of the system. If the Federal Act should be held unconstitutional the state acts would continue to operate. So the federal-state system was launched in preference to the national system, in which the federal government would administer the entire plan, and in preference to the subsidy plan, in which the government collects all the taxes and subsidizes the states.

Indeed, argued the proponents of the measure, the Court cannot look into the motive of Congress, provided the power exercised be constitutional. And certainly, the imposition of an excise tax is constitutional. But here the motive is not concealed. The Court is not required to seek it. It stands out, starkly revealing the taxing power as a mere pretext.

We contend further that the provisions of TITLES III and IX have not only no reasonable relationship to the taxing power, but no relationship at all; that the Act is not severable, for it is plain that without the system of unemployment Congress would not have enacted the measure.

Pursuing the Act from its beginning through the lengthy hearings and the debates in Congress, one can come to but one conclusion: That Congress stepped beyond its sphere and in

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1 295 U. S. 495 (79 L. E. 1570)

the most far-reaching measure it has ever enacted, undertook to assume control of activities of the states fundamental in their character.

If Congress has this power, no longer may a clash of sovereignties ring out. The states will have lost their powers and one supreme government will regulate their affairs from Washington.

ARGUMENT

I

Analysis of TITLES III, VII and IX of the Federal Act

In framing the Federal Act Congress undertook to separate the taxing provisions from the regulatory provisions, with the expressed hope[1] that this Court would consider them separately, as a result of which the possibility of their being held void would be enhanced. It is therefore the view of the petitioner that the Court must consider, not only the taxing sections of the act, but all related provisions. These are found in TITLES III, VII and IX. The Court is not required to explore to find the motive of Congress in enacting the legislation. Such a motive and purpose stand out boldly in its written provisions.

TITLE III of the Act authorizes an appropriation of $49,000,000 annually for the purpose of assisting the states in the administration of their unemployment compensation laws. The basis on which the Social Security Board determines the amount to be paid to each state is (1) the popula-

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[1] Infra, pp. 79, 80, 86, 88.

tion of the state, (2) an estimate of the number of persons covered by the state law and of the cost of proper administration of such law, and (3) such other factors as the Board finds relevent. [302 (a)].

The Board is forbidden to certify payments to any state until it finds that the law of such state includes provisions for (a) such methods of administration (other than as to selection, tenure of office, and compensation of personnel) as the Board finds to be reasonably calculated to insure full payment of unemployment compensation when due; (b) payment of unemployment compensation solely through such agencies as the Board may approve; (c) opportunity for a fair hearing for all individuals whose claims for unemployment compensation are denied; (d) the immediate payment of all contributions exacted by the state, to the Secretary of the Treasury to the credit of the Unemployment Trust Fund established by the Federal Act, and the expenditure of all money requisitioned by the state from this Trust Fund, in the payment of unemployment compensation only; (e) the making of such reports, in such form and containing such information, as the Board may from time to time require, and compliance with such provisions as the Board may find necessary to assure the correctness and verification of such reports; (f) making available upon request to any agency of the United States charged with the administration of public works or assistance through public employment, certain detailed information relating to the status of each recipient of unemployment compensation, with a statement of such recipient's right to further compensation under such law [303 (a)].

The Board is authorized to terminate payments to any state upon a finding that there is (g) a denial by the state agency in a substantial number of cases of unemployment

compensation to individuals entitled thereto under the law, or (h) a failure of substantial compliance with any of the provisions contained in (a) to (f) of the next preceding paragraph. [303 (b)].

TITLE VII of the Act establishes the Social Security Board, imposes on it the duties provided by the Act and also the duty of studying and making recommendations as to legislation and matters of administrative policy concerning unemployment compensation and related subjects.

Under TITLE IX of the Act taxes are imposed on employers amounting to 1 per cent. during 1936, 2 per cent. during 1937 and 3 per cent. thereafter. (901). Against this tax the employer may credit the amount of contributions paid by him into an unemployment fund under a state law, such credits not to exceed 90 per cent. of the federal tax and to be allowed only for contributions made under the laws which shall have been approved by the Board. (902).

The Board is required to approve any state law which provides, among other things, that (a) all compensation is to be paid through such public agencies as the Board may approve; (b) no compensation shall be payable with respect to any day of unemployment occurring within two years after the first day of the first period with respect to which contributions are required; (c) all money received by the state is to be immediately paid over to the Secretary of the Treasury to the credit of the Unemployment Trust Fund, and all money withdrawn from this fund is to be used solely in the payment of compensation, exclusive of expenses of administration; (d) compensation shall not be denied by the state to any otherwise eligible individual for refusing to accept new work (1) if the position offered is vacant due directly to a strike, lock-out or other labor dispute, (2) if the wages,

hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality, or (3) if as a condition of being employed the individual would be required to join a company union or to resign or refrain from joining any bona fide labor organization; (e) the legislature has the right at any time to amend or repeal the state law without reservation of any rights, privileges or immunities conferred by such law. [903 (a)]. The Board is authorized on December 31 in each taxable year and after notice and opportunity for hearing to disapprove the law of any state which it shall have theretofore approved, and thus deprive the employer of the 90 per cent. credit otherwise afforded him under the Federal Act, if the Board finds that such law no longer contains the provisions specified under (a) to (e) of this paragraph or has with respect to such taxable year failed to comply substantially with any of such provisions. [903 (b)].

The Unemployment Trust Fund is established in the Treasury and all states are required to deposit all contributions in such fund. The Secretary is directed to administer the fund and is authorized to purchase United States bonds on the market. The purposes for which obligations of the government may be issued under the Second Liberty Bond Act are extended to authorize the issuance of special obligations exclusively to the fund, the interest rate of which shall be equal to the average rate of interest borne by all interest bearing obligations forming part of the public debt. Such special obligations may be redeemed at par plus accrued interest and the Secretary may sell any obligations acquired by the fund. The fund shall be invested as a single fund but the Secretary shall maintain a separate book account for each state agency. He is directed to pay to any state agency such amount as the latter may duly requisition, not exceed-

ing the amount standing to its account at the time of such payment.

This TITLE contains a list of definitions including employer, wages, state agency, employment fund and contributions. "Employment" means any service performed within the United States by an employee for his employer except (a) agricultural labor; (b) domestic service in a private home; (c) service performed as an officer or member of the crew of a vessel on the navigable waters of the United States; (d) service performed by an individual in the employ of certain members of his immediate family; (e) service in the employ of the United States Government; (f) service in the employ of a state or of its political subdivisions; (g) service performed in the employ of a corporation, community chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals. (907).

II

The Court May Give Consideration to the Deliberations of Legislative Bodies

What is the purpose of the TITLES of the Act under attack? The only power under the Constitution which appears on the face of the Act and which Congress is authorized to exercise is the taxing power. But the purpose of the Act appears on its face to be, not to raise revenue, but to bring about a condition of social security so that, among other things, unemployment will be lessened if not ended. Is this purpose valid? Is this use by Congress of the taxing power a pretext to accomplish an object which is beyond the con-

stitutional power of Congress? In ascertaining the purpose of the Act the court

> "is at liberty to advert to the view expressed by individual members in debate, or by a committee in its report, and gather therefrom as from any other source the history of the times or of the evil which the legislation was intended to remedy. . . . "
>
> 25 R. C. L. 1037, Section 270.

In United States v. Union Pacific Railroad Company (1875), 91 U. S. 72 (23 L. ed. 224), the court said that

> "courts may, with propriety, in construing a statute, recur to the history of the times when it was passed, and this is frequently necessary, in order to ascertain the reason as well as the meaning of particular provisions in it." (citing cases) [1] 79 (228).

Joseph R. Binns v. United States (1904), 194 U. S. 486 (48 L. ed. 1087), was a case involving license fees on certain kinds of business in Alaska. The court considered

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[1] See also *American Net and Twine Company v. Roland Worthington* (1891), 141 U. S. 468, 473-4 (35 L. ed. 824); *Church of the Holy Trinity v. United States* (1892), 143 U. S. 457, 465 (36 L. ed. 226, 230); *Standard Oil Company of New Jersey v. United States* (1910), 221 U. S. 1, 50 (55 L. ed. 619, 641); *United States v. Forty Barrels* (1916), 241 U. S. 265, 281-3 (60 L. ed. 995, 1002-3); *Duplex Printing Press Co. v. Emil J. Deering* (1921), 254 U. S. 443, 474-5, 477 (65 L. ed. 349, 360, 361); *Railroad Commission of Wisconsin v. Chicago, B. & Q. R. Co.* (1922), 257 U. S. 563, 588-9 (66 L. ed. 371, 383); *United States of America, et al. v. Missouri Pacific Railroad Company* (1928), 278 U. S. 269, 278-9 (73 L. ed. 322, 376-7); *Federal Trade Commission v. Raladam Company* (1931), 283 U. S. 643, 650-1 (75 L. ed. 1324, 1330-1); *Atlantic Cleaners & Dyers, Inc., Globe Dry Cleaners & Dyers, Arcada-Sunshine Company, et al., v. United States of America* (1932), 286 U. S. 427, 435 (76 L. ed. 1204, 1208); *United States v. Shreveport Grain & Elevator Co.* (1932), 287 U. S. 77, 83 (77 L. ed. 175, 178); *Humphrey v. United States* (1935), 295 U. S. 602, 624-6 (79 L. ed. 1611, 1617-18).

the investigation made by the committee reporting the bill to Congress, saying that the committee prepared the list of licenses

> "after consultation with prominent citizens of the territory of Alaska, including the governor and several other officers, . . ." 495-6 (1091)

In *United States v. St. Paul, Minneapolis & Manitoba Railway Company, et al.* (1918), 247 U. S. 310 (62 L. ed. 1130), involving a suit by the United States to annul a patent to lands on the ground of fraud and mistake, the court considered a special message of the President explaining the magnitude of the work of adjustment arising out of railroad land grants and recommending an amendment to be enacted by Congress applicable to such a situation, and to the fact that the Committee to which the President's message was referred did not accede to the recommendation contained therein. [316 (1133)].

While no ambiguity exists in the Act and while by its plain terms its purpose is beyond the powers of Congress, the court may go further in support of the theory that the use of the taxing power is a pretext. In *United States v. Great Northern Railway Company* (1932), 287 U. S. 144 (77 L. ed. 223), the court referred to the rule that in aid of construction of a statute if the meaning be uncertain, the court has recourse to the legislative history of the measure and the statements by those in charge of it during its consideration by Congress. It stated [154 (230)] that in construing the act in question the court had not traveled beyond the borders of the statute; but that

> " . . . If such recourse be had, there is confirmation of the view that the certificates were more than estimates of provisional advances." 155 (230)

and proceeded to consider the progress of the statute through Congress.

In showing such use of the taxing power to be a mere pretext we shall have recourse to the following:

(1) Messages of the President of June 8, 1934, and January 4, 1935;

(2) Message of the President of January 17, 1935 transmitting the Report of the Committee on Economic Security theretofore created by the President by executive order and recommending legislation on the subject of Economic Security;

(3) The Report of the Committee on Economic Security;

(4) The introduction in both houses of the Wagner-Lewis bill;

(5) The hearings on the Wagner-Lewis bill before the Ways and Means Committee of the House and the Committee on Finance of the Senate;

(6) The reports of the House and Senate Committees recommending the passage of the bill;

(7) The debates in Congress on the passage of the bill.

We use the following excerpts from the statements of the witnesses before the Committees, not to indicate the view of the individual, but to show that the testimony before the Committees indicated without exception that the purpose of the bill was to avoid the evils of unemployment which the history of the times showed was so disastrous. If this thought and purpose run throughout the entire history of the consideration of that subject—the Messages of the President, the

Report of the Committee on Economic Security, the Hearings before the Committees, and the Debates in Congress,—it must result that the plain purpose of the bill was not to raise taxes; that the use of the taxing power by Congress is a mere pretext to accomplish an object beyond the powers of Congress. The purported tax loses its qualities as a tax, becomes a mere penalty to force the states to carry out the plan and scheme of Congress, and is invalid.

In explanation of the extent to which we feel impelled to go in submitting this history to the Court, we have only to say that the hearings before the Committees occupy 2,492 pages and the debates in Congress extend over a period of nine days in the House and six days in the Senate, with consideration being given the measure at other times and during its several stages; the debates in the house being found in the Cong. Rec., Vol. 79, Part 5, beginning at page 5454 and ending at page 6070; and in the Senate in Part 9, beginning at page 9267 and ending at page 9650.

(1) History and Evils of the Times and General Purposes of the Legislation

(a). Messages of the President

In his message to Congress on June 8, 1934 (Cong. Rec. Vol. 78, Pt. 10, p. 10770) the President set out that the first objective in the task of reconstruction was " . . . the security of the men, women, and children of the nation . . . "; that this security for the individual and for the family concerns itself primarily with three factors.

> " . . . . People want decent homes to live in; they want to locate them where they can engage in productive work; and they want some safeguard against misfortunes

which cannot be wholly eliminated in this man-made world of ours." (Ib.)

The President referred to the custom in the earlier days when security was attained through the interdependence of members of families upon each other and of the families within a small community upon each other; but that the complexities of great communities and of organized industry

> "make less real these simple means of security. Therefore, we are compelled to employ the active interest of the Nation as a whole through government in order to encourage a greater security for each individual who composes it. (Ib.)

* * * * *

> "The third factor relates to security against the hazards and vicissitudes of life. Fear and worry based on unknown danger contribute to social unrest and economic demoralization. If, as our Constitution tells us, our Federal Government was established, among other things, 'to promote the general welfare', it is our plain duty to provide for that security upon which welfare depends. (Ib.)
>
> "Next winter we may well undertake the great task of furthering the security of the citizen and his family through social insurance. (Ib. p. 10771)

* * * * *

> "These three great objectives—the security of the home, the security of livelihood, and the security of social insurance—are, it seems to me, a minimum of the promise that we can offer to the American people. They constitute a right which belongs to every individual and every family willing to work. They are the essential fulfillment of measures already taken toward relief, recovery, and reconstruction.

"This seeking for a greater measure of welfare and happiness does not indicate a change in values. It is rather a return to values lost in the cause of our economic development and expansion.

"We must dedicate ourselves anew to a recovery of the old and sacred possessive rights for which mankind has constantly struggled—homes, livelihood, and individual security. The road to these values is the way of progress. Neither you nor I will rest content until we have done our utmost to move further on that road." (Ib.)

In his message upon the convening of Congress, January 4, 1935, the President referred to his message of June 8, 1934, stating that a comprehensive survey of what had been attempted or accomplished in many nations and in many states on the subject of security proved to the President that the time had come for action by the national government; that he would send to Congress in a few days definite recommendations based on these studies, covering, among others, the broad subjects of unemployment insurance and old age insurance. (Cong. Rec. Vol. 79, Pt. 1, p. 95).

Accompanying his message of January 17, 1935 the President submitted to Congress the Report of the Committee on Economic Security which he had created. He referred to the fact that most of the other advanced countries of the world have adopted social insurance, and that their experience affords the knowledge that it can be made a sound and workable project (Ib. p. 598). He strongly recommended action to attain the objectives sought in the report submitted, referred to his promise in his annual message to submit a definite program of action, which he now does in the form of a report to him by a Committee on Economic Security, appointed by him for the purpose of surveying the field and of recommending the basis of legislation. (Ib.)

"The detailed report of the committee sets forth a series of proposals that will appeal to the sound sense of the American people. It has not attempted the impossible, nor has it failed to exercise sound caution and consideration of all the factors concerned; the national credit, the rights and responsibilities of States, the capacity of industry to assume financial responsibilities, and the fundamental necessity of proceeding in a manner that will merit the enthusiastic support of citizens of all sorts." (Ib.)

(b). Report of the Committee on Economic Security

In his message of January 17, 1935, the President said that he was

"gratified with the work of this committee (on Economic Security) and of those who have helped it: The Technical Board on Economic Security, drawn from various departments of the Government; the Advisory Council on Economic Security, consisting of informed and public-spirited private citizens and a number of other advisory groups, including a Committee on Actuarial Consultants, a Medical Advisory Board, a Dental Advisory Committee, a Hospital Advisory Committee, a Public Health Advisory Committee, a Child Welfare Committee, and an Advisory Committee on Employment Relief. All of those who participated in this notable task of planning this major legislative proposal are ready and willing, at any time, to consult with and assist in any way the appropriate congressional committees and Members with respect to detailed aspects." (Cong. Rec., Vol. 79, Pt. 1, p. 598)

In its report, signed by the Secretaries of Labor, Agriculture and the Treasury, by the Attorney General and the Federal Emergency Relief Administrator, the Committee on Economic Security said:

"In our economic system the great majority of the workers must find work in private industry if they are to have permanent work. The stimulation and maintenance of a high level of private employment should be a major objective of the Government. All measures designed to relieve unemployment should be calculated to promote private employment and also to get the unemployed back into the main channel of production. We believe that provision of public employment in combination with unemployment compensation will most effectively serve these purposes. Both will operate to maintain purchasing power, and public employment will indirectly give work to many more persons in private industry who otherwise would have none. At the same time it will stimulate workers to accept and seek private employment when it becomes available. (Report to the President of the Committee on Economic Security, p. 8)

* * * * *

"*Individual industry and company accounts.*—The primary purpose of unemployment compensation is to socialize the losses resulting from unemployment, but it should also serve the purpose of decreasing rather than increasing unemployment. . . . (Ib. p. 22)

* * * * *

" . . . . Normally the insured worker will return to his old job or find other work before his right to benefits is exhausted. If he does not find work, we recommend that his further period of unemployment should be met by a work benefit, as described in the section of this report dealing with employment assurance . . . " (Ib. p. 14)

(c). Hearings Before the Committees on Ways and Means of the House of Representatives and on Finance of the Senate

There was a total of one hundred and eighty-four appearances made before or statements submitted to the Committees on Ways and Means of the House and on Finance of the Senate. It is interesting to note the classes into which they may be divided.* These are, with the number of appearances in each class, as follows:

		Number of Witnesses Appearing
1.	Business Associations and Organizations	23
2.	Economic Research Institutions and Societies	5
3.	Governmental Agencies and Departments	24
4.	Health Agencies and Societies	12
5.	Individuals Unclassified	21
6.	Labor Interests	12
7.	Miscellaneous Societies and Associations of Particular Classes	12
8.	National Women's Associations	5
9.	Religious Societies	5
10.	Representatives and Senators	13

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*CLASSIFICATION OF APPEARANCES MADE AND STATEMENTS PRESENTED BEFORE THE HOUSE COMMITTEE ON WAYS AND MEANS AND THE SENATE COMMITTEE ON FINANCE ON THE HEARINGS ON THE ECONOMIC SECURITY ACT

1.

Business Associations and Organizations

C. D. Cass[1]—American Transit Association[2]
George B. Chandler—Ohio Chamber of Commerce[3]
James L. Donnelly—Illinois Manufacturers Association[2]

(1) The witness represents or is connected with the organization, department or office appearing after his name.
(2) Appeared before House Committee.
(3) Appeared before Senate Committee.

		Number of Witnesses Appearing
11.	Societies and Associations Interested in the Blind	4
12.	Societies and Associations Interested in Welfare of Children	4
13.	Societies Interested in the Betterment of Social and Living Conditions	10
14.	State Agencies	20
15.	Universities, Schools and Related Subjects	14

The hearings are closely and intimately connected with the reports of the Committees and the debates in Congress; for it was in committee room that the discussions first arose on which the reports are based and which were brought to and repeated on the floor of the House and Senate.

Mr. Treadway, a member of the Ways and Means Committee, referred on the floor of the House to the fact that there was little testimony before that committee from persons of experience in business lines; that practically everybody who appeared had some part in drafting the legislation or was consulted with respect to the problems involved; that

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Business Associations and Organizations (Cont'd.)

James A. Emery—National Association of Manufacturers[4]
Lincoln Filene—William Filene's Sons Co.[3]
H. Walter Forster—Vice President of the Pension Casualty Division, Towers, Perrin, Forster & Crosby, Inc.[4]
John C. Gall—National Association of Manufacturers[3]
Henry I. Harriman—United States Chamber of Commerce[3]
John Harrington—Illinois Manufacturing Association[3]
Elon H. Hooker—Manufacturing Chemists Association[3]
Albert D. Hutzler—Vice Chairman National Retail Dry Goods Association[4]
J. P. Kerr—Association of Drainage and Levee Districts of Illinois[2]
J. F. Kolb—National Metal Trades Association[3]

(2) Appeared before House Committee.
(3) Appeared before Senate Committee.
(4) Appeared before House and Senate Committees.

there were not in excess of half a dozen persons who testified who were not a part of the "present new-deal administration." (Cong. Rec. Vol. 79, Pt. 5, p. 5528)

Business Associations and Organizations (Cont'd.)

Stanley Latshaw—National Publishers Association[3]
L. C. Morrow—National Publishers Association[3]
Lloyd A. Peck—Laundryowners' National Association[3]
Samuel W. Reyburn—National Retail Dry Goods Association[4]
Noel Sargent—National Association of Manufacturers[3]
W. A. Snow—Associated General Contractors of America[3]
Harold W. Story—Vice President and General Counsel, Allis-Chalmers Manufacturing Company[3]
U. S. Engineers, Inc.—New York City[3]
Wm. R. Webster—Connecticut Manufacturers Association[3]
W. R. Williamson—Travelers Insurance Company[2]

2.

Economic Research Institutions and Societies

Dr. Robert R. Doane—Director of Research, American Business Surveys[4]
Henry E. Jackson—President, Social Engineering Institute[3]
E. W. Mason—Progressive Study Club[2]
Dr. Harold G. Moulton—Brookings Institution[2]
George Shibley—Director, The Research Institute[3]

3

Governmental Agencies and Departments

Miss Grace Abbot—Member Advisory Council on Economic Security[4]
Dr. Fred L. Adair—Advisory Committee on Child Welfare[2]
A. Altmeyer, Jr.—Second Assistant Secretary, Department of Labor[2]
Hon. Hugh S. Cumming—Surgeon General, U. S. Public Health Service[4]
Robert G. Elbert—Member Unemployment Insurance Committee to the Industrial Advisory Board[3]

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(2) Appeared before House Committee.
(3) Appeared before Senate Committee.
(4) Appeared before both House and Senate Committees.

(d). Hearings Before the Committee on Ways and Means of the House

The general purposes of the bill are indicated by the statements of the following named witnesses:

Murray Latimer, Chairman, Railroad Retirement Board, discussing the fundamental difference between old-age insurance and unemployment compensation lamented the fact

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Governmental Agencies and Departments (Cont'd.)

Dr. I. S. Falk—Member of the Staff of the Committee on Economic Security[3]
M. B. Folson—Member Advisory Committee on Economic Security[4]
Frank P. Graham—Chairman Advisory Council[4]
Dr. Clifford G. Grulee—Advisory Committee on Child Welfare[4]
Miss Helen Hall—Member, Advisory Council to the Committee on Economic Security[3]
Alvin Hanson—Chief Economic Analyst, Department of State[4]
Harry L. Hopkins—Federal Relief Administrator[2]
Paul H. Kellog—Vice Chairman, Advisory Council to the Committee on Economic Security[3]
Murray Latimer—Chairman Railroad Retirement Board[4]
Wm. N. Leiserson—Chairman National Mediation Board[4]
Miss Katherine Lenroot—Chief, Children's Bureau, U. S. Department of Labor[4]
Hon. Henry J. Morgenthau—Secretary of the Treasury[2]
George Nordlin—Advisory Council on Economic Security[2]
L. H. Parker—Chief of Staff, Joint Committee on Internal Revenue Taxation[3]
Hon. Frances Perkins—Secretary of Labor[4]
Miss Josephine Roche—Assistant Secretary of the Treasury[4]
John W. Studebaker—Commissioner of Education, Department of the Interior[4]
C. E. Waller—Assistant Surgeon General, U. S. Public Health Service[2]
Dr. E. E. Witte—Executive Director, Committee on Economic Security[4]

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(2) Appeared before House Committee.
(3) Appeared before Senate Committee.
(4) Appeared before both House and Senate Committees.

that there is nothing we can do about getting old; we either have to get old or die; but that there is some possibility of reducing the amount of unemployment, if proper incentives

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4

Health Agencies and Societies

Dr. T. F. Abercrombie—State and Territorial Health Officers Conference[2]
H. B. Anderson—Citizens Medical Reference Bureau[4]
Rev. George Reid Andrews—American Eugenics Society[3]
Dr. George E. Bennett—Maryland League for Cripplied Children[2]
Dr. Walter Bierring—American Medical Association[2]
S. J. Crumbine—American Child Health Association[4]
Miss Susan Lawrence Davis—Townsend-Davis Clystertory Health Treatments[4]
Lawrence L. Gourley—American Osteopathic Association[4]
Julia Minerva Green—Women's Homeopathic Medical Fraternity[3]
Rt. Rev. Monsignor Maurice F. Griffin—Catholic Hospital Association[2]
Robert Jolly—American Hospital Association[4]
R. J. Knoppel—Vice President, International Society for Crippled Children[2]

5

Individuals Unclassified

Benjamin F. and Henrietta Adams—Silver Springs, Maryland[3]
C. M. Armstrong—Schenectady, New York[2]
Hugo E. Czerwonky—Washington, D. C.[4]
H. H. Halsell—Lubbock, Texas[2]
A. L. Harbison—Tulsa, Oklahoma[2]
Roger Sherman Hoar—North Milwaukee, Wisconsin[3]
Glen J. Hudson—Oakland, California[2]
Philip Ickler—Portland, Oregon[3]
C. G. Kelley—Cleveland, Ohio[2]
Dr. George M. Lyon—Huntington, West Virginia[4]

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(2) Appeared before House Committee.
(3) Appeared before Senate Committee.
(4) Appeared before both House and Senate Committees.

are given to the employer to make all the rearrangements, the planning, the control of production, for the purpose of eliminating unemployment. (Hearings before the Committee on Ways and Means of the House, p. 229)

Individuals Unclassified (Cont'd.)

William P. McGervey[2]
James Ragland Miller—Hartford, Connecticut[4]
O. Otto Moore—Denver, Colorado—Representative of Townsend Clubs of Colorado[2]
Dr. Oscar Reiss—Professor, Southern California Medical School[3]
M. H. Reymond—Industrial Engineer[3]
Miss Marquis Robb—Newtonville, Massachusetts[3]
Dr. F. E. Townsend—Long Beach, California[4]
Joseph P. B. Weir—Washington, D. C.[3]
Ernest Wells Williams—Washington, D. C.[3]
Mrs. James H. Wolfe—Women's Division, Democratic Committee[3]
Dr. Rachelle Yarros—Hull House, Chicago, Illinois[3]

6

Labor Interests

I. Amter—National Unemployment Council[4]
John B. Andrews—American Association for Labor Legislation[3]
Nathan Cronheim—Local Action Committee and the Philadelphia Chapter of the Interprofessional Association[3]
David Gordon—Committee for Unemployment Insurance[3]
William Green—President American Federation of Labor[4]
O. J. Hall, Jr.—Local Action Committee for Workers, American Federation of Labor[2]
Thomas Kennedy—International Secretary-Treasurer, United Mine Workers of America, Lieutenant Governor of Pennsylvania[3]
David Lasser—Workers' Unemployed Union[2]
Frank W. McCulloch—Chicago Workers' Committee on Unemployment[4]

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(2) Appeared before House Committee.
(3) Appeared before Senate Committee.
(4) Appeared before both House and Senate Committees.

William M. Leiserson, Chairman, National Mediation Board, said that the problem was not one of relief when 60 or 70 per cent. of the elderly unemployed are willing and able to work and are unable to find work. It is a very great injustice to remit them to charity.

Labor Interests (Cont'd.)

Charlton Ogburn—Counsel to the American Federation of Labor[3]
Louis Weinstock—National Committee on Unemployment Insurance, American Federation of Labor[2]
Ralph Whitehead—American Federation of Actors[4]

7.

Miscellaneous Societies and Associations of Particular Classes

Earl Browder—Communist Party[3]
Guy Irving Burch—Population Reference Bureau, New York[3]
John J. Burke—National Catholic Welfare Conference[3]
Wm. D. Gutfirie—Chairman Special Committee of the American Bar Association[3]
C. A. Hathaway—Communist Party in the United States[2]
Richard W. Hogue—Independent Legislative Bureau[3]
Charles H. Houston—National Association for the Advancement of Colored People[4]
Benjamin C. Marsh—People's Lobby[4]
Frank L. Peckham—Sentinels of the Republic[3]
Dr. Ellen Potter—National Committee on Care of Transient and Homeless[3]
Sherwood L. Reeder—U. S. Conference of Mayors[4]
Mrs. Margaret Sanger—President, National Committee on Federal Legislation for Birth Control[3]

8

National Women's Associations

Mrs. Harris T. Baldwin—National League of Women Voters[4]
Louise G. Baldwin—National League of Women's Voters[2]

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(2) Appeared before House Committee.
(3) Appeared before Senate Committee.
(4) Appeared before both House and Senate Committees.

" . . . . There is something the matter with industry, and we ought to say that 'here is a fund at the cost of industry out of which you can draw an income, a meager income to be sure, that will keep your family together.' " (Ib. p. 406)

The witness likened unemployment insurance which is paid the worker when his job is cut off to workmen's compensation which is paid him when his toe is cut off, insisting that the same principle should be applied to both situations. (Ib.)

National Women's Associations (Cont'd.)

Miss Elizabeth Christman—National Women's Trade Union League[4]
Mrs. Beatrice Pitney Lamb—National League of Women Voters[4]
Mrs. Charles W. Sewell—Associated Women of American Farm Bureau Federation[3]

9

Religious Societies

George E. Haynes—Federal Council of Churches of Christ in America[4]
George A. Huggins—Church Pensions Conference[4]
Owen E. Pence—National Council, Y. M. C. A.[3]
Mrs. Frederick Shelton—National Board of Young Women's Christian Associations[3]
Bert Wilson—Church of the Disciples of Christ[2]

10.

Representatives and Senators

Representatives

Hon. George Burnham, California[2]
Hon. Sam L. Collins, California[2]
Hon. Wm. M. Colmer, Mississippi[2]

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(2) Appeared before House Committee.
(3) Appeared before Senate Committee.
(4) Appeared before both House and Senate Committees.

David Lasser, representing the Worker's Unemployed Union, urged that Congress tell the employing class of America that Congress would provide a sufficiently large public works program to employ all jobless, at living wages, who are thrown out of work; that for those who cannot be so employed unemployment insurance will be provided, which will be charged to "the employers and the wealthy class". (Ib. p. 786). Such a policy would cause all employers to consider carefully "whether they had better not re-employ their workers rather than pay the same wages as an unemployment insurance fund. . . . " (Ib. p. 787)

Representatives (Cont'd.)

Hon. Henry Ellenbogen, Pennsylvania[2]
Hon. David J. Lewis, Maryland[2]
Hon. John L. McClellan, Arkansas[2]
Hon. James W. Mott, Oregon[2]
Hon. Wright Patman, Texas[2]
Hon. Samuel B. Pettingill, Indiana[2]
Hon. Howard W. Smith, Virginia[2]
Hon. Roy O. Woodruff, Michigan[2]

Senators

Hon. Daniel O. Hastings, Delaware[2]
Hon. Robert F. Wagner, New York[3]

11.

Societies and Associations Interested in the Blind

Lewis H. Carris—National Society for the Prevention of Blindness[3]
Robert B. Irwin—The American Foundation for the Blind[3]
H. R. Latimer—Pennsylvania Association for the Blind[3]
L. L. Watts—Virgina Commission for the Blind, and the American Association of Workers for the Blind[3]

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(2) Appeared before House Committee.
(3) Appeared before Senate Committee.

(1). *Adequacy of the Measure*

Dr. E. E. Witte, Executive Director of the Committee on Economic Security, said that this unemployment program is not a complete program for dealing with the hazards

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12.

Societies and Associations Interested in Welfare of Children

C. W. Areson—Child Welfare League of America, Inc.[3]
Jacob Kepecs—Child Welfare League of America[2]
Mrs. Virginia Kletzer—Child Welfare Commission of Oregon[3]
J. Prentice Murphy—Children's Bureau of Philadelphia[2]

13.

Societies Interested in the Betterment of Social and Living Conditions

Herbert Benjamin—National Council for Unemployment and Social Insurance[4]
R. E. Clements—Old-Age Revolving Pensions, Ltd.[3]
Abraham Epstein—Executive Secretary, American Association for Social Security[4]
George D. Evans—Organization for the Abolition of Poverty[2]
Miss Dorothy Kahn—American Association of Social Workers[3]
Mrs. William Kittle—The National Consumers' League and Women's Homeopathic Medical Fraternity[4]
C. C. Mayer—End Poverty in Civilization Society[2]
Miss Lea D. Taylor—Illinois Committee on Social Security[3]
Miss Mary Van Kleeck—Russell Sage Foundation[2]
M. M. Walter—National Rehabilitation Association[3]

14.

State Agencies

Elmer F. Andrews—State Industrial Commissioner of New York[3]

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(2) Appeared before House Committee.
(3) Appeared before Senate Committee.
(4) Appeared before both House and Senate Committees.

of unemployment; that it is complementary to the proposal of a work program (Ib. p. 133). The benefits, while limited, are valuable. At the time they are paid the employee has a reasonable prospect of getting back to his old employment (Ib. p. 141).

State Agencies (Cont'd.)

M. L. Brown—Old Age Pension Bureau of Ohio[2]
R. R. Clark—Supervisor of Rehabilitation, State of Illinois[2]
Homer Folks—Secretary, State Charities Aid Association, New York[2]
Clarence E. Ford—Acting Commissioner of Social Welfare, New York[2]
H. D. Hicker—Chief of Bureau of Vocational Rehabilitation of California[2]
Harry H. Howett—Secretary-Treasurer, Michigan Crippled Children's Commission[4]
Mrs. Blanche La Du—Minnesota State Board of Control[3]
John J. Lee—Department of Public Instruction, Michigan[2]
Dr. R. M. Little—State Educational Department, New York[2]
Dr. A. T. McCormack—Commissioner, State Board of Health[3]
Dr. Thomas Parran—State Health Commissioner of New York[2]
Miss Olivia Peterson—Minnesota Department of Health[2]
Charles B. Reed—Illinois State Medical Society[2]
S. Merwin Sinclair—Executives of State Commissions and State Agencies for Blind, and Pennsylvania Council for the Blind[3]
Dr. Lillian R. Smith—Michigan Department of Health[2]
Joseph Sweeney—President, Child Welfare Board of Cuyahoga County, Ohio[2]
Mrs. Alfred Moore Tunstall—Director Alabama State Welfare Department[2]
Dr. F. J. Underwood—Mississippi State Health Officer[3]
Dr. Alfred A. Walker—Chairman Board of Health, Jefferson County Medical Society[2]

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(2) Appeared before House Committee.
(3) Appeared before Senate Committee.
(4) Appeared before both House and Senate Committees.

William Green, President of the American Federation of Labor, objected to the amount of the tax as being inadequate to provide a shorter waiting period than four weeks and to pay the employee a larger compensation than that contemplated with the maximum of $15.00 per week for fifteen weeks (Ib. p. 392). He recommended that the tax be increased to five per cent. Unless benefits are extended considerably beyond fifteen weeks, they will not cover the time which experience shows the unemployed seek work before they find it. Even in times of prosperity 54 per cent. of the unemployed wage earners would fall outside the period

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15.

Universities, Schools, and Related Subjects

Mrs. Mary T. Bannerman—Committee on Legislation, Congress of Parents and Teachers[3]
Miss S. P. Breckinridge—School of Social Service Administration, University of Chicago[2]
J. Douglas Brown—Director Industrial Relations, Princeton University[4]
Dr. Eveline M. Burns—Columbia University[4]
Dr. Paul H. Douglas—University of Chicago[4]
Dr. Allen W. Freeman—School of Hygiene and Public Health, Johns Hopkins University[2]
Percival Hall—Chairman Executive Committee, Conference of Executives of American Schools for the Deaf[3]
Clarence A. Kulp—University of Pennsylvania[3]
Mrs. B. F. Langworthy—National Conference of Parents and Teachers[2]
Dr. Cloyd H. Marvin—American Council on Education[3]
E. V. McCollum—Johns Hopkins University[4]
Dr. James R. McCord—Emory University[3]
Miss Louise McGuire—National Association of Classroom Teachers[2]
Francis D. Tyson—Professor of Economics, University of Pittsburgh[3]

(2) Appeared before House Committee.
(3) Appeared before Senate Committee.
(4) Appeared before both House and Senate Committee.

provided during which benefits could be paid under a 3[1] per cent. tax; 26 per cent. would find work within the waiting period of four weeks and 28 per cent. would be out of work more than fifteen weeks. In times of depression or extended unemployment, as high as 80 per cent. of the unemployed wage earners would fall outside the benefit period, while in average times 60 per cent. would be outside. (Ib.)

(2). To Avoid Competition Between Industries in Different States

Dr. Witte stated:

" . . . The purpose of the entire scheme is to make it possible for States to enact unemployment compensation acts. States cannot very readily burden their employers with the cost of unemployment compensation, unless they know that their competitors in other States will also have that same cost. . . .

"The system operates so that employers in a State that does not enact an unemployment compensation act will have the same cost as employers in States that do not enact an unemployment compensation act. The disadvantage that a State puts itself under by enacting such an act is removed by this bill. (Ib. p. 136)

* * * * *

"The contribution by the employer is made uniform because it is impossible for the States to act unless the cost to the employers throughout the country is uniform. I think that is elementary. (Ib. p. 142)

* * * * *

"Mr. Cooper (of Tennessee). Doctor, if I understand the underlying principle supporting the idea of a Federal tax, it is to make it uniform throughout the entire country?

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1 Changed to 1 per cent. for 1936, 2 per cent. for 1937, and 3 per cent. thereafter. (Sec. 901)

"Mr. Witte. Yes, sir." (Ib. p. 145)

Mr. Cooper (a member of the Committee) stated that "we are legislating for a long time in the future here." (Ib. p. 147)

Miss Perkins, Secretary of Labor and Chairman of the Committee on Economic Security, stated that levying the same tax whether or not there is an unemployment-insurance law in a state "is a very real equalization of competitive costs between employers in the various states, so that there will be no special advantage to any employer to continue to carry on his business in a state which does not have an unemployment insurance law." (Ib. p. 183)

Alvin Hansen, Chief Economic Analyst, Department of State, and chairman of the sub-committee considering the unemployment features of the measure, set out the intention of the bill to be to "equalize the interstate competitive situation. . . " If the states wished to impose heavier contributions, that was their business; but at any rate "there would be an equalization of interstate competition to the extent that each state would tax the employer 3 per cent." (Ib. p. 377)

Albert D. Hutzler, Vice Chairman, National Retail Dry Goods Association, referred to the fact that there were missing from the bill minimum standards of compensation, which should be written into the bill

> "in order that no State may adopt such low standards that most industries can take advantage of differential rates and thus give partially cooperating States a competitive advantage over fully cooperating States. (Ib. p. 773)
>
> * * * * *
>
> "Mr. Cooper . . . The point I am asking you at this time is whether or not you recognize that the under-

lying principle which forms the basis for the system of unemployment insurance from a national standpoint, is the question of competition.

"Mr. Hutzler. Competitive concerns should have equal opportunities under it. (Ib. p. 780)

* * * *

"Mr. Cooper . . . In other words, the purpose of having a national unemployment insurance system other than having State unemployment insurance systems is to try to strike at the question of competition, is it not?

"Mr. Hutzler. Oh, absolutely." (Ib. pp. 780-1)

Mr. Cooper, while questioning Senator Hastings, who was before the Committee, stated that the Committee had been led to believe that the underlying principle supporting the idea of levying a federal tax was the necessity of meeting the question of competition that would arise and would be a very serious question that would have to be encountered; that he believed it had been rather clearly shown all along that

"it is highly desirable to have a uniform rate of tax levied on industry throughout the entire country so as not to produce a situation where the industry of one State can undersell the industry of another State because that other State has to bear a tax that it does not.

"Senator Hastings. I think that is very important. It is the one argument in favor of this bill that is sound, in my judgment, economically." (Ib. p. 961)

The Report of the Advisory Council to the Committee on Economic Security set out that disadvantages in interstate competition are always raised against purely state legislation that involves costs to industry; that this knot should be cut by requiring industries in all states (whether the states enact

unemployment compensation laws or not) to make uniform payroll contributions. (Ib. pp. 882-3)

The minority of the Council adopted a motion recommending the tax-credit type of law as having, among others, the advantage of requiring uniformity where uniformity is essential, namely the equalization of competitive costs. (Ib. p. 883)

(e). Report of Ways and Means Committee of the House

The report (No. 615) traces the history of the legislation beginning with the President's message of June 8, 1934, the appointment by him of the Committee on Economic Security which devoted six months to the study of the subject, assisted by its staff of specialists and by fourteen advisory groups; refers to the President's message of January 17, 1935 adopting the report and forwarding it to Congress. The committee report sets out the purpose, scope and need for the legislation.

Under the question of unemployment compensation the report notes that the establishment by the states of unemployment compensation systems is urgently to be desired in order to provide something better than relief on a needs basis for the unemployed of the future; that TITLES III and IX seek to encourage the states to set up such systems and to keep them from being handicapped if they do so. (Report, p. 7)

The report undertakes to tread softly with reference to the standards imposed on the states (Ib. pp. 8-9), but sets out on later pages a list of requirements as contained in the bill (Ib. pp. 34-5).

(1). Adequacy of the Measure

Unemployment is due to many causes and there is no one safeguard that is all sufficient. Provisions must be made for the relief of those now unemployed, and there should also be devised a method for dealing with the unemployment problem in a less costly and more intelligent way in future years. State unemployment compensation plans are designed to afford security against the large bulk of unemployment in the future. The essential idea in unemployment compensation is the accumulation of reserves in time of employment from which partial compensation may be paid to the unemployed for a limited period and for a percentage of the wage loss. In normal times it will enable most workers who lose their jobs to tide themselves over without having to resort to relief, to which it is greatly preferable because it is given without any means test. (Ib. p. 7)

The failure of the states to enact unemployment insurance laws is due to the competition to which their industries would be subjected with those of other states. It is therefore necessary before the states can go ahead to impose a

> "uniform, Nation-wide tax upon industry, thus removing this principal obstacle in the way of unemployment insurance, . . . (Ib. p. 8)
>
> "This is one of the purposes of title IX of this bill. . . . " (Ib.)

The report refers to the important functions which the Federal Government under the bill has to perform

> "in order to make it possible for the States to have unemployment insurance laws and to facilitate their operation. It equalizes competitive conditions through the

imposition of the employment excise tax provided for in title IX. . . . " (Ib. p. 9)

(f). Hearings before the Committee on Finance of the Senate

Before the Senate Committee on Finance the history and evils of the times were more extensively discussed than before the Committee on Ways and Means of the House. Senator Wagner, the author of several prior bills of like purpose, was a member of the committee and took a foremost part in its deliberations. "What can human ingenuity do," asked he, "to prevent economic disorder in its most widespread and virulent forms from leading to national disaster? This may be called the problem of industrial stabilization." (Hearings before Committee on Finance, U. S. Senate, p. 2)

" . . . Unemployment is also the force that attacks and destroys those who live on the narrow margin of security. Lost profits may be regained upon the upward swing of the business cycle, but the working day that is lost is gone forever. Above all, the secret of unemployment is the key to industrial stabilization. In 1929 fluctuations of 600 per cent. in the volume of unemployment were the storm signals of depression. When we discover how to keep men at work, we shall have discovered all.

"Unemployment insurance ranks high in the list of remedies for unemployment. In respect to those disinherited during normal times, it is more economical than relief because preparedness is better than planlessness; and it is more humane because it does not rest upon the degrading means test which assumes that society has no duty to the idle worker until he is destitute." (Ib.)

Others who discussed this subject fully were Miss Perkins, Secretary of Labor, and William Green, President of the American Federation of Labor.

Miss Perkins' forecast for the present generation of children is an "infinitely complicated" life, unless provisions are made for unemployment, as well as for old-age and sickness. (Ib. p. 101) An accumulation of these various types of unemployment, together with world-wide depressions which are partially financial and partially economic in their causes, creates a situation over which no employer has any control. Some people become completely destitute. Others have their incomes reduced. For instance, the general trend of one industry from New England States to the Southern States has put out of work in the former a large number of people formerly attached to that industry, who faced a prolonged period of social readjustment for which no particular provision was made, and which constituted a very serious cause of destitution.

> " . . . I should like to say with regard to unemployment insurance that the circumstances of the last few years have certainly impressed most of us with the necessity of making preliminary provisions for benefits to unemployed persons in order to carry them, as individuals, through periods of depression when, through no fault of their own, they are without work, and also to provide that preliminary provision for their individual needs, or at least modify the relief programs as they affect localities, States, and even the Federal Government." (Ib. p. 111)

Mr. Green, in his presentation of the viewpoint of labor regarding the proposed social-security legislation recalled that during every depression we have had in recent years, we talked about unemployment insurance, plans for which were

always forgotten with a return of prosperity. The United States is the last great industrial country to give serious consideration to a system of unemployment insurance, being decades behind in the development of a social program, comprehensive systems having been in practical operation in various foreign countries for many years. (Ib. p. 141) Today the lives of millions of our people are governed by the fear of losing their jobs. Economic security today and for a long time will be our greatest national problem. The bitter experiences of the past five years have rudely shattered our belief that this problem would take care of itself. (Ib. pp. 141-2) In our continued dependence upon relief we see the gravest dangers to our wage-earning population. Relief must be a temporary and emergency measure, "unless we wish so seriously to undermine morale that many men and women will never again be self-sustaining or self-respecting citizens." (Ib. p. 142) During the present years of unemployment the members of organized labor have contributed out of their earnings more than sixty million dollars per annum in an attempt to extend temporary relief for unemployment relief, sickness and out-of-work benefits; some trade unions are struggling in an effort to care for their unemployed members, "and as a result are contributing a very large percentage of their own earnings for the purpose of taking care of the unemployed." (Ib. pp. 142-3)

Miss Perkins stated that the thing for us to do as a group "is to provide socially for the method of taking care of the people who are most adversely affected by such a depression." (Ib. p. 102) It seems wise, therefore, to take steps in advance "to provide for a steady income to people when they are unemployed through no fault of their own. . . ." (Ib.)

Mr. Green said that

"if employers are going to continually displace workers, then they will have to be prepared to pay more out of their earnings to take care of those displaced. They have to increase the tax; that is all. (Ib. p. 145)

* * * *

"We can hope and expect only that unemployment insurance will help to maintain wage levels and will exert some stabilizing effect upon our industrial system. We may hope also, I believe, that it will help in bringing about a more equitable distribution of income than we have had in the past or have at the present time. (Ib. p. 154)

* * * *

"Senator Couzens. Did your committee give any consideration to the fixing of an annual income for these workers and making it a charge against industry?" (Ib. p. 214)

Dr. Witte:

"We felt that by legislation you cannot reverse the entire tide. We have in this bill provisions to encourage what we call guaranteed employment, which is essentially an annual salary idea." (Ib. p. 215)

In the Report of the Advisory Council to the Committee on Economic Security, dated December 18, 1934, it is said that the plan should promote security by providing compensation for workers who are laid off, and should serve as an incentive to employers to provide steady work and to prevent unemployment. (Ib p. 226)

Wm. N. Leiserson, Chairman of the National Mediation Board, stated the purpose of the unemployment tax [fix-

ed at 3 per cent. in the bill being considered by the committee (Sec. 601)]

> "is really to meet only one situation. The National Government is called upon to pay out great sums of money in doles. There is no way of avoiding it if you make no other provision for unemployment. The National Government therefore wants to stimulate the States to provide for their own people, in their own way, and one way is unemployment insurance, and it is not the only way." (Ib. pp. 273-4)

J. Douglas Brown, Director Industrial Relations Section and Professor of Economics, Princeton University, stated the purpose of the federal-state cooperation to be

> "to stimulate a more intelligent stabilization of industry and to provide more security for the workers. . . . " (Ib. p. 316)

Abraham Epstein is one of the leading authorities in this country on social security. He describes unemployment insurance as being chiefly interested in offering a system whereby the unemployed workers, who through no fault of their own lose their jobs, can at least be given self-respecting financial assistance without being placed on relief as paupers immediately after they lose their jobs. Its aim is to provide at least a first break to the unemployed worker when he loses his job through no fault of his own, as long as it can be done and for as many weeks as possible (Ib. p. 464)

> " . . . but essentially let us keep that in mind, that we are concerned with one thing only in this bill, and that is to offer the best bulwark to the unemployed workers.
>
> * * * *
>
> "That purpose of providing a break for the unemployed worker, regardless of the stabilization and unemploy-

ment, is the chief purpose of unemployment insurance as it is brought about and as it is understood by all students, . . . " (Ib.)

The Advisory Council to the Committee on Economic Security consisted of twenty-three members (Report, p. 51). Six members of the committee (M. B. Folsom, M. E. Leeds, S. Lewisohn, Raymond Moley, Gerard Swope and W. C. Teagle) on December 15, 1934 made a supplemental statement to the report which the council had theretofore made to the Committee on Economic Security, in which they set out the following:

"1. The first objective that should be encouraged is stabilization of employment, or assurance of employment, and this is along the line of the President's pronouncement that, if this could be accomplished, the worker would be able to look forward to at least a minimum amount for an annual wage on which to plan his family's support. This should produce better work at lower cost, reflected in lower selling prices and a consequent increase in consumption on the part of the community. . . . " (Ib. p. 324)

A report was submitted to the Industrial Advisory Board by the Unemployment Insurance Committee, acting at the request of the former. The report set out that unemployment compensation is, primarily, a social service.

Miss Perkins:

" . . . we expect the States to provide systems of unemployment insurance which will pay cash benefits for limited periods of time, a period limited by the size of the fund and by the actuarial principles of keeping the fund sound." (Ib. p. 119)

Senator Black of Alabama:

"A maximum of 6 months?

"Secretary Perkins. Fifteen weeks, perhaps or 26 weeks; the duration depends on various factors.

"Senator Black. Yes. (Ib.)

* * * *

"Senator Black. Let me see if I understand the basis of your viewpoint for distinguishing between the two. As I understand it, then, it is your view, so far as unemployment insurance is concerned, that it takes care of temporary unemployment only?

"Secretary Perkins. That is all.

"Senator Black. Probably caused by technological changes, shifting from one plant to another, or temporarily closing down of a plant.

"Secretary Perkins. Seasonal variation.

"Senator Black. So far as that is concerned it is your opinion, and perhaps the opinion of the committee, that it is proper for that to be taken care of locally on the theory that if local communities have to take care of it it would be an incentive to reduce such temporary unemployment?

"Secretary Perkins. Yes, sir.

"Senator Black. But insofar as unemployment lasting over a long period of time is concerned, the hazards of health, hazards of old age - - (Ib. p. 124)

"Secretary Perkins. And dependency of youth.

"Senator Black. And dependency of youth, over a long period, that the committee is of the opinion that that is not purely local and would call for Federal aid to the localities.

"Secretary Perkins. Yes, sir.

"Senator Black. Thank you.

"Secretary Perkins. That is the principle involved in this bill." (Ib. p. 125)

Mr. Green expressed the hope that unemployment insurance would help to maintain wage levels, to exert some stabilizing effect upon our industrial system, and to bring about a more equitable distribution of income than has existed in the past or exists in the present. (Ib. p. 154). Employees would have to work a certain length of time and make certain payments, the plan being an insurance feature. (Ib. p. 169)

Dr. Witte defined the concept of unemployment compensation as

> "merely a measure to give a limited benefit to employees during a period while they have a reasonable opportunity to be taken back within a short time in their old positions. Unemployment compensation, if it is not to be mere relief, must be based on the contributions that are received. Unless the contribution rates are extremely high, the period during which compensation can be paid will necessarily be quite limited." (Ib. p. 215)

Mr. Leiserson likened the remedy to fire insurance, which is just "to help people who suffer to avoid some of the suffering." (Ib. p. 271)

From the Preliminary Report of the Technical Board to the Committee on Economic Security, we take the following:

> "(a) Unemployment insurance is an essential measure for the economic security of the most stable part of our industrial population, but is not a complete, all sufficient solution of the problem." (Ib. p. 327)

M. B. Folsom, Assistant Treasurer, Eastman Kodak Company, stated the purpose of the legislation to be to provide, or to build up, a fund from which to pay benefits to people who are laid off for a limited period. (Ib. p. 555)

Miss Helen Hall, President National Federation of Settlements and Member of the Advisory Council to the Committee on Economic Security:

> " . . . unemployment compensation is one way of adjusting the loss so that the unemployed themselves and their children shall not bear the whole burden of lost earnings, with resulting deprivation and misery. . . . " (Ib. p. 769)

Robert G. Elbert, one of the signers of the Report of the Unemployment Insurance Committee to the Industrial Advisory Board, said that the insurance system will act as a dam against the rising tide of distress. (Ib. p. 845). Unemployment insurance is based on the idea that a reserve fund will be accumulated in normal times to meet the contingency of unemployment in eras of depression; to carry the insured over out-of-work periods in normal times. (Ib. p. 848)

Miss Lea D. Taylor, of the Illinois Committee on Social Security, said that the 3 per cent. payroll tax "is entirely inadequate and does not provide security to the worker. . . . " (Ib. p. 975)

(1). Work Benefits to be Paid After Compensation is Exhausted

It was practically the unanimous thought of the proponents of the measure that the government would be required in periods of world-wide or national depressions over

which no group has any control to make its contributions in the form of a supplemental system of work benefits "paid for out of federal taxes" to which the unemployed could look after their cash benefits had been exhausted. (Miss Perkins, pp. 119-120)

(2). To Avoid Competition Between Industries in Different States

So long as the Federal Government remains dormant, there will be practically no unemployment insurance at all. After decades of propaganda and education, only Wisconsin has by enacting a law of its own dared to throw down the gauntlet to the interstate competition of other states with lower standards. (Senator Wagner, Ib. pp. 3-4). The purpose of the credit of 90 per cent.[1] was to put all states on a parity so that if a state refuses to pass a law it hasn't the competitive advantage gained by its low standard. "That is the purpose of the Act." (Ib. p. 22)

Miss Perkins: The effect (of the 3 per cent. tax) is to equalize the competitive cost of manufacturing between the states by equalizing the amount of the contribution (Ib. p. 122); the purpose being

> "to equalize the cost of doing business in every State, so far as it can be equalized, with regard to taking care of unemployed persons." (Ib. p. 126)

Dr. Witte said:

> " . . . The States cannot act—experience has shown that amply—the States cannot act unless the competitive disadvantage to which the employers within a given State are subjected by having an unemployment compensation

[1] Social Security Act, Section 902.

law while neighboring States do not, is removed." (Ib. p. 220)

The Report of the Advisory Council to the Committee emphasizes the effect of the measure as securing

"uniformity where uniformity is essential, namely, the equalization of competitive costs." (Ib. p. 227)

Dr. Witte: Very few states will act

"so long as the Federal Government does not remove the disadvantage to which employers in such a State are under in interstate competition. . . . " (Ib. p. 240)

The disadvantage resulting to a state enacting such a law has defeated many such bills and

"Unless you remove that great obstacle to State action you cannot or are not likely to have unemployment compensation laws along State lines." (Ib. p. 241)

The same view was presented by Mr. Leiserson (Ib. p. 274) who suggested that when employers in a state are shown that they will have to pay the (federal) tax anyway, as will their competitors

"that objection will be removed and they will go along with State laws, which many of them have said they would like to have if they could." (Ib. p. 274)

J. Douglas Brown: The employer contribution

"makes uniform throughout industry a minimum cost of providing old-age security and protects the more liberal employer now providing pensions from the competition of the employer who otherwise fires the old person without a pension when superannuated." (Ib. p. 284)

Elmer F. Andrews, Secretary of the American Association for Labor Legislation, said that the good employer will not be

> "undercut unfairly in competition with his competitors in States that otherwise might not take the legislative action." (Ib. p. 442)

Mrs. Beatrice P. Lamb, representing the National League of Women Voters, (Ib. p. 443) and Mrs. Frederick Shelton, representing the National Board of Young Women's Christian Associations (Ib. p. 444) upheld the argument that the tax would remove the element of competition.

Senator Harrison, Chairman of the Committee and the Senator in charge of the bill on the floor of the Senate, referred to the competitive system as bringing about an unjust result to the manufacturers in the states putting on the tax, to which Mr. Epstein replied that this argument against the tax was being met by requiring all employers to pay the same tax. Mr. Epstein inquired:

> " . . . all employers would be paying the same tax, but after all, Senator, what are you after? Are you after just merely levying a tax on the employers, or are you after providing benefits for unemployed workers? . . . " (Ib. p. 468)

Albert D. Hutzler of Baltimore, Vice Chairman of the National Retail Dry Goods Association, said that the retailers, having studied the bill at great length, believed that a national law should be passed so that interstate competition would be the same, but that the funds should be contributed by the employer, the employee and the state. (Ib. p. 712)

Paul H. Kellogg, Editor The Survey and Survey Graphic, and Vice Chairman of the Advisory Council, Committee on Economic Security, referred to the fear of interstate competition which for twenty years had kept the states (except Wisconsin) from acting, said that once the payroll tax provisions of the bill are passed, the disadvantage in one state of protecting employees against unemployment will no longer exist and the dread of unfair competition will be lifted.

> "The Wagner-Lewis bill will mark a great advance in using the force of congressional enactment as a leverage to overcome the drag of interstate competition. The Federal payroll tax provided for in the bill will free and spur the States to act, and its funding provisions will pry the reserves raised into the custody of the Federal Treasury to prevent their chaotic handling. (Ib. p. 904)
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> * * * *
>
> "To start action the country over, and to start it right, the bill recognizes the need for national leverage. We look to the Federal pay-roll tax to get the States to act. By the same token we should look to national standards in the Federal bill to assure minimum protection the country over. If we let them slide now we shall be confronted later on with the coalesced resistance of States and industrial interests to any interference with their own standards, however meager. Instead of scotching the snake of interstate competition, we shall have it in this new guise, harder to combat, putting employers in progressive States at a new disadvantage and stultifying the attempt to give security to wage earners everywhere." (Ib. p. 905)

James A. Emery, Counsel for the National Association of Manufacturers, commenting on the claim of interstate competition, raised the specter of foreign competition. (Ib. pp. 925-6)

Dr. Eveline M. Burns, Columbia University, who prepared an article on the bill (S. 1130) lamented its failure to go further and lay down the essential standards to be required of approved unemployment insurance schemes; the absence of which

> "seriously limits the extent to which the general 3 percent. tax levy protects business men from unfair competition from States which enact inadequate unemployment-compensation laws." (Ib. p. 1007)

Miss Grace Abbott, Editor Social Service Review and Professor of Public Welfare, University of Chicago, commented that as a result of the uniformity in the tax levied "the competitive aspect is withdrawn." (Ib. p. 1081)

Henry E. Jackson, President Social Engineering Institute, New York City, regards the "depreciation of human machinery" as a proper charge to production cost, to be absorbed as such if our industries are all on the same basis of competition. (Ib. pp. 1112-13)

(g) Report of the Committee on Finance of the Senate

Senator Harrison, Chairman of the Committee on Finance, submitted the report on May 20, 1935. The committee in the report referring to the trying years of the depression stated that "unemployment is the most important single cause of dependency . . . . a hazard which confronts all industrial workers . . . ." (Senate Report No. 628, Committee on Finance, U. S. Senate, 79th Congress, 1st Session, May 20, 1935, p. 10) The report continued: The present is the most opportune time for launching the plan. Great interest exists in the subject and improved conditions forecast the building up of considerable reserves within the next few years. Delay

the plan, and reserves otherwise available for the next industrial crisis will be correspondingly lessened. (Ib. p. 16) The depression demonstrates the great cost of "the folly of failure" to make timely provision for social security. (Ib. p. 27)

(1). Adequacy of the Measure

Unemployment compensation differs from relief in that payments are made as a matter of right, not on a needs basis. The period of payments is related to the prior period of employment. After the waiting period compensation is paid at a stated percentage of the prior wage, with a minimum and maximum rate. Beneficiaries must accept suitable employment when offered or they lose their right to compensation. (Ib. p. 11) To the extent that unemployment reserves are accumulated, they will reduce the necessity for relief. In normal periods unemployment compensation will provide a sufficient safeguard for most of the unemployment that will occur, and in depression periods very materially reduce the burden of relief costs. (Ib. pp. 15-16) "That we must have a greater degree of security than has prevailed heretofore . . . . . if our social order is to endure, is tragically evident." (Ib. pp. 27-8)

(2). Work Benefit to be Paid After Compensation is Exhausted

Supplemental to unemployment compensation is need for work relief after compensation is exhausted and for workers outside the compensation system. (Ib, p. 11)

(3). To Avoid Competition Between Industries in Different States

Interest in unemployment compensation began with the depression of 1920-21. Bills on this subject have been intro-

duced in state legislatures, but until 1932 all were defeated, "principally on the argument that no state can afford to handicap its employers in competition with those of other States. . . ." (Ib. p. 11) Under the plan proposed in the bill the handicap of competition will be removed. (Ib. p. 16)

> " . . . With a uniform tax and its offset device, employers in all States will be put in an equal competitive position. No State can gain any advantage through failing to establish an unemployment compensation system. This provision will equalize competitive conditions and thus enable States to enact unemployment compensation laws without handicapping their industries." (Ib. p. 13)

(*h*). *Statements made in House of Representatives*

Mr. Greenwood of Indiana feared that the monoply arising from the profits accruing to the management of industry would not be divided with those who worked with their hands; that the invention of machinery crowds out hundreds and thousands of men and women workers. (Cong. Rec. Vol. 79, Pt. 5, p. 5455). He favored the measure which turned the advantages accruing from the machine to the care of the people displaced. (Ib. p. 5456)

Mr. Scott of California agreed with Mr. Greenwood that more wealth resulted from technological development and contended that such wealth should be in turn devoted in part to provide unemployment insurance. (Ib. p. 5477)

Mr. Truax of Ohio:

> "Unemployment is due not only to the depression but to tremendous concentration of wealth in the hands of a few, massed industry, and the mechanistic age. I heartily approve of unemployment compensation. The cost should be borne, however, by the large industrialists who

profit by the sweat and toil of wage workers . . . . (Ib. pp. 5689-90)

* * * * *

". . . . The steam shovel, the tractor, the road grader, the huge concrete mixer, the cigarette robot displace permanently thousands of workers. Here, unquestionably, shorter hours, less days per week, and at the same weekly wage level as was formerly received for the longer hour day and week, must prevail in the end. To bridge the gap now between wholesale and ruinous unemployment, workers' compensation must be established." (Ib. p. 5691)

Mr. Mott of Oregon stated that with the last thirty or forty years, and particularly the last ten years, the improvements in methods of producing and distributing the necessary commodities required only a portion of our population to provide all we need and are able to buy. (Ib. p. 5586)

Mr. Doughton, Chairman of the Ways and Means Committee, and in charge of the bill:

"The need for unemployment insurance is well recognized. Eighty-five percent of the families on relief are in want because of unemployment. Unemployment, or the fear of unemployment, has been the principal reason for the unfortunate decline of our purchasing power. No greater hazard confronts the American worker today than that of losing his job. . . . (Ib. p. 5476)

"Unemployment insurance is based upon the principle of laying aside reserves during periods of employment to be used in periods of unemployment. . . . (Ib.)

"It is undoubtedly true that what the American citizen wants and needs, above all else, is steady employment, but under modern economic conditions and with the rapid development of machine techniques, it is inevitable

that large numbers of workers will be thrown out of work from time to time. . . ." (Ib.)

Mr. Eaton of New Jersey:

" . . . . And as for the hazards of life, Mr. Chairman, how are you going to avoid hazards? They are the essence of life. There will not be a blade of grass grow to maturity this summer that does not have to fight for its existence every moment. (Ib. p. 5580)

" . . . . This is a crazy notion, as expressed in a lot of this new-deal legislation, and accepted by increasing numbers of our people, that somehow, by some legerdemain, the Government of the United States can make it impossible and unnecessary for any of its citizens to face any difficulty, to run any risk, to bear any burden, but to be assured an income in youth, childhood, and old age, and even after they die. The thing is absolutely absurd. (Ib.)

* * * * *

"Mr. Chairman, I think we stand today in this country at the crossroads of a great decision which transcends all parties, all sections, and all interests; and this decision is whether we are going to choose American organized industry as the instrument for the solution of these tremendous, far-reaching problems, or whether we are going to resort to some modified form of Russianism and attempt to solve these problems by government. . . . . the ultimate aim of the new deal is to place all American industry, business, and individual liberties under the control of Government here in Washington. We have no Democratic Party and we have no Republican Party functioning as such in an American way. We are in a state of suspense awaiting to see what under heaven's name is going to happen to the country and to our Government." (Ib. pp. 5581-82)

Mr. Dirkson of Illinois thought that

". . . . the matter of effecting happiness for our people is one of the basic objectives of government." (Ib. p. 5811)

Mr. McCormack of Massachusetts:

". . . . Under our economic system, known as the 'profit system', we shall always have the employer and the employee. As a result of this relationship, problems arise which require action on the part of the Government to control and regulate, where the general welfare is involved, whenever abuses arise out of private industry and whenever private industry is unable to control them, the continuance of which abuses would be inconsistent with the welfare of the country. Under such circumstances some agency must step in and assume the burden of correcting such abuses in the interest of the general welfare; and in the past, as we see again in the pending bill, this agency is government itself." (Ib. p. 5871)

Mr. Knutson of Minnesota:

"Business recovery at the present time hangs in a very delicate balance. Every additional burden of this kind upon business, however small, tends to make recovery more remote; hence, imposing directly upon industry such a tremendous burden as I have mentioned is bound to cause a reaction which will result in prolonging the depression indefinitely.

* * * * *

"The prime need of the hour is recovery, not social reform. Since these proposals to which I am opposed are definitely within the scope of social reform, there is no compelling reason for taking them up at this time unless when so doing we provide a proper measure to restore business volume." (Ib. p. 5544)

Mr. Dickstein of New York:

" . . . Unemployment is even more of a curse of modern society than is dependent old age. Some plan of unemployment insurance had therefore to be devised if ours was to be a country where the individual was to live happily and enjoy the blessings of civilization. . . ." (Ib. p. 5704)

Mr. Rich of Pennsylvania:

"Today, while we are talking about social security and trying to take care of the people of this country, it seems to me there is only one way you are going to be able to do it, and that is to let the business people of the United States try to employ other people in the United States so that we can be our brother's keeper, and in this way we will furnish employment, so that men may earn bread and butter for their children and for themselves in order that they may sustain life. . . ." (Ib. p. 5795)

Mr. Doughton of North Carolina:

"The proposed bill presents a broad plan for social security, embracing measures for (1) protection against destitution and dependency in old age, (2) unemployment compensation, (3) security for children, and (4) increased public health protection. These measures of protection against the principal causes of destitution and dependency, taken together, in conjunction with the immediate program of public works, and with the cooperation of the States, will provide a coordinated plan for social security. It is of great importance that the many overlapping phases of insecurity should be approached in this manner, rather than through separate piecemeal proposals. (Ib. p. 5468)

* * * * *

"The essential feature of the social-security bill is that of social insurance against the principal hazards or

risks which have caused American families to become dependent upon relief. These causes are well known: (1) Unemployment, (2) old age, (3) lack of a breadwinner in families with young children, and (4) sickness. The bill includes comprehensive measures against all but the last of these. Measures proposed to furnish protection against the risks arising out of old age and unemployment are usually called social insurance. Social insurance protects the worker and his family against dependency by enabling them, with the help of their employers, to build up reserves which may be used during periods of unemployment and in old age . . . . . (Ib.)

* * * * *

"Title VII establishes a social-security board of three members, appointed by the President for overlapping terms of 6 years each. The social-security board will have charge of the administration of the grants in aid to the States for old-age pensions and the administration of the Federal old-age-benefit system. It will also be responsible for the certification of State unemployment-compensation systems and is charged with the duty of making actuarial and scientific studies of the broad problems of social security." (Ib. p. 5476)

Mr. Hill of Washington:

"Mr. Chairman, this legislation is forward looking. It means to take care of the future and create conditions in the future operation of the industry and economics of this country that will absorb some of the shock of these panics and depressions; at least tend to stabilize industry and employment and carry the country along over the rough spots until conditions may be righted . . . . . " (Ib. p. 5536)

Mr. Eaton of New Jersey:

" . . . . I am especially opposed to it in the part that has to do with unemployment insurance in industry. I

think I can speak with some authority on this subject, because I have spent the last 18 years of my life in the industries of this country, based upon the belief that industry has become the chief instrument of modern civilization, and unless industry in some way is permitted to function and solve its problems by its own initiative and in accordance with its own nature I do not see how civilization can escape final collapse. I admit with sorrow the failure of industrial leaders in the past to face the social implications of their job. They have been deluded, like everyone else, by the notion that a part is greater than the whole. But this ought not to involve capital punishment for all industry, nor does it justify turning all industry over to the control of politically minded bureaucrats." (Ib. pp. 5580-1)

Mr. Kenney of New Jersey:

". . . . The passage of this bill has for its purpose the lifting of worry and economic insecurity from the minds and backs of our people. Perchance the method employed by the bill is not the ideal way to accomplish our purpose. And to me there is a close constitutional question involved on the job-insurance provisions. But I shall vote for the bill as it is looking forward to the security of our employed, and that means the Nation." (Ib. p. 5606)

Mr. Cullen of New York:

"The economic-security bill presents the most substantial evidence to date that our twin objectives of recovery and reform are found in an inseparable unity of purpose and action. While the horror of the depression is still fresh upon our memory, we are taking decisive steps to shake off its lingering aftermath, to prevent its recurrence, and to set up safe guards for those who may suffer in the future from economic forces beyond the control of the individual. (Ib. p. 5685)

* * * * *

"Another important feature of this bill is the provision for unemployment insurance. There is no reason why the worker unemployed through no fault of his own should be more neglected than machinery that is idle during the slack season. There is no justification for giving the man who has grown old and tired in the performance of his life's work no consideration for his efforts. The day has passed when the wealthiest nation in the world can remain the most delinquent in its treatment of the most pressing of all social questions." (Ib.)

Mr. May of Kentucky:

". . . . It [the measure] grows out of conditions that have fastened themselves upon this country during this depression, and I may say that in the report of the majority of the committee as to the purpose and scope of the bill, I think they state it very soundly when they say that this is laying the foundation for social security in the future, . . . " (Ib. p. 5779)

Mr. Healey of Massachusetts:

". . . . They [members of the minority party] fail to visualize the tendency of unemployment insurance toward stabilizing and insuring steady, year-around employment." (Ib. p. 5813)

Mr. Haines of Pennsylvania:

". . . . Title III of the bill does not give full and complete insurance against unemployment, but it is the beginning of a fund that will be built up that will furnish sufficient funds for the maintenance of those who will find themselves unemployed, for temporary periods, and I think in the writing of any legislation we are wise in making it temporary periods, for unless we do (and throw down the bars) we will find a great host of our people who will not take a job or work when offered. These are the evils we must guard against. We do not

want to put into effect a dole system that will further break down the morale of our people, but on the contrary make men and women work when an opportunity is afforded to them. The temporary benefits will tide many of the unemployed over until they can find a job. That, as I understand it, is the purpose of the bill. . . . " (Ib. p. 5826)

Mr. Dickstein of New York:

". . . . Our legislation today is record breaking and the statutes we are enacting today will forever lift the specter of want and depression from the shoulders of the American people. We are providing in short for social security, the security of every man and women who is gainfully employed to see to it that they are not caught again in the throes of unemployment, and security provided for old age so that when men and women have passed their prime and are no longer in a position to be gainfully employed, the community should step in and save old age from want. Such in brief are the purposes of the bill, and such in brief are the ideals which this administration wishes to enact into law by way of stabilizing and assuring our people of a fair and honorable living." (Ib. p. 5704)

Mr. Sirovich of New York stated that the Federal Government could assist business, industry and labor by the

"perfection of unemployment insurance in times of prosperity to provide for the unemployed in times of distress.

* * * * *

" . . . . This bill seeks to minimize unemployment by cushioning with unemployment insurance any critical period of unemployment that might afflict us in the future." (Ib. p. 5789)

(1). Adequacy of the Measure

Mr. Doughton:

" . . . . Some think various provisions are too inadequate. I, for one, would far rather start cautiously than to go too far and bring about the collapse of our handiwork in the future. . . . " (Ib. p. 5476)

Mr. Treadway of Massachusetts:

"I might point out that even if the States promptly enact unemployment-insurance laws no benefits could be paid to the unemployed until after a reserve has been built up, and this, of course, would take several years. Even then benefits would be paid for only a few weeks, after a certain waiting period, and with the present number of unemployed the funds would soon be exhausted." (Ib. p. 5529)

Mr. Truax of Ohio:

"Mr. Chairman, I think that they generally admit, as we all do, that this bill does not in any manner or means adequately or satisfactorily solve the problems which we seek to solve. However, we all admit that this is a beginning. We admit that unless more effective provisions, such as increasing the amount of old-age pensions, finding additional sources of revenue, and increasing in the end unemployment compensation, this legislation will eventually fall by its own weight. . . . " (Ib. p. 5688)

Mr. Cooper of Tennessee:

". . . The central purpose of the Federal bill in regard to unemployment compensation is to equalize the financial burden placed upon employers throughout the country and thereby permit States to go ahead." (Ib. p. 5782)

(i). Statements Made in the Senate

Senator Harrison, Chairman of the Committee in charge of the bill, in discussing the unemployment problem said:

"For in normal times, and in fact even in boom years, there is always considerable unemployment. Some 3,000,000 people who wanted work did not obtain it in the comparatively prosperous year of 1928. When machinery is replaced by more efficient machinery, when overproduction arises from any of many causes, when an industry is dying because its product is being supplanted, men are thrown out of work. (Cong. Rec., Vol. 79, Pt. 9, p. 9270)

"Further, with little thought directed toward stabilization, many industries operate with considerable irregularity of employment. There are peak periods and there are low periods, and a plant that employs thousands of men in March and April carries on with merely a skeleton force in the autumn months. The thousands who are thus dropped face a resulting period of unemployment, exhausting, in many instances, their meager savings, and sometimes becoming a charge on charity before an opportunity for regular wages is again afforded them. (Ib.)

"It has always been natural for the cost of this unemployment to fall upon the local community. Those who are out of work first look to their neighbors for help; and, when that source is no longer sufficient, to their local and State governments. Unemployment may, in extraordinary depressions, necessitate the Federal Government assisting the States to meet the problem, but otherwise the problem of so-called 'normal' unemployment is one that primarily is of local concern. (Ib.)

"This has long been recognized by the States, and the problem of meeting this 'normal' unemployment has been the subject of earnest study by commissions estab-

lished by them. Especially has this been true since 1929, when increasing ranks of the unemployed brought the necessity of some action more keenly to public attention. (Ib.)

"It is significant that almost every State commission investigating the subject urged some form of unemployment insurance, and, while differing as to details, uniformly recognized that part or all of the cost should be borne by employers in industry and that reserves should be built up in good times to help in providing for the welfare of those unfortunates cut off from regular work by seasonal unemployment, or that resulting from the many other causes found even in normal times." (Ib.)

Senator Wagner, who with Mr. Lewis of the House, was the author of the bill, discussed "Economic Insecurity as an Indictment of America". He traced social insecurity in its modern aspects from the dawn of the factory era, the increasing shift from farm to city—all beginning with the end of the Civil War. He referred to the economic strength which our energy and genius had built, the extent and efficiency of our mechanical equipment, our resources, fabulous enough to offer a promise against the possibility of adversity, to the enormous wealth which we achieved exceeding the wildest flights of fancy; for all of which we became "the envy and admiration of the universe, and a shining example for the ages yet to come". (Ib. p. 9283)

The Senator's flights of fancy continued. From the material wealth which blessed us a prophet of old would have envisaged the worker freed from the necessity of seeking bread alone, secure against unemployment, working under conditions calling forth creative intelligence, enjoying ample leisure for the cultivation of family life and the enrichment of spiritual outlook. The worker grown old, would spend his

declining days in mellow comfort, neither the charge of charity nor the victim of the bitterness of unrequited efforts. But the prophet awakened in 1922 to face a rude disillusionment. In these matchless years until 1929, he found three million unemployed—twenty million were living in the cold cellars of poverty. Old people relied upon younger relatives. Children were denied the joys of carefree childhood. The inequitable distribution of tremendous wealth "was sharpening the tragic contrast between the House of Have and the House of Want."

The Senator traced his efforts beginning in 1928 to begin a survey of unemployment, for the creation of a nation-wide exchange system, and for the inauguration of a long-range public-works program. In 1930 and 1931 he introduced measures designed to promote federal encouragement of unemployment insurance laws in the several states, similar in ideas to the present bill. They were promptly buried in committee. At his instance a special senatorial investigation of the problems of unemployment insurance was had. A committee of three senators had protracted hearings, the majority deprecating the potentialities of federal action. The Senator filed a minority report urging immediate legislation along the lines of the pending measure.

> "When future historians of the gilded age from which we have emerged seek a moral to adorn their story, they will find that social injustice brought the retribution of sure decline. The income of the masses, shriveled by the blight of wide spread unemployment and uncompensated old age, was not sufficient to buy the goods flowing from the ever expanding factories. The huge profits of the few, which could not be spent in self indulgence, were reinvested again and again in plants and machines. When the market became flooded with unsold surpluses, the depression came with the certainty of nightfall. (Ib.)

"From that emergency we have been rescued by a program combining constructive action with enduring faith in the essential fortitude and strength of the American character. We now seek a new era of well being in which the social inequalities of the past will be driven forever from the scene. We seek a more even tempered and widely diffused economic enjoyment that will provide a bulwark against the resurgence of hard times. The social-security bill draws its inspiration from both of these objectives. It is a compound in which are blended elements of economic wisdom and of social justice. (Ib.)

"UNEMPLOYMENT INSURANCE: LEGISLATIVE PHASE

"At the very hub of social security is the right to have a job. Even in the care-free decade of the nineteen twenties, an average of 1,500,000 workers per year were care-worn and tormented by the visitation of unemployment. Between 1922 and 1933, 15 percent of our total man power remained idle and disdained. When 15,000,000 people walked the streets of despair in early 1933, we knew at last that the fall and rise of our national prosperity kept pace with the rise and fall of unemployment; and we knew that until we solved this baffling enigma, our bravest and sincerest efforts would spend themselves in vain. (Ib.)

"There is no quick relief for unemployment that has reached its zenith, any more than there is a sure cure during the last stages of a malignant disease. But the common experience of many progressive countries has revealed a relatively humane and economical method of alleviating the sporadic or seasonal unemployment which occurs even during normal times. And in addition to its curative aspects, it is a method which serves as a check upon further unemployment. Needless to say, this remedy is unemployment insurance. (Ib.)

"There are many reasons why unemployment insurance in the United States should be developed along State lines. The tremendous expanses of our territory and the infinite variety of our industrial enterprises create totally dissimilar conditions in different parts of the country. Besides, it would be unwise to fit an inflexible straitjacket upon the entire Nation without testing by comparison in operation the two or three major proposals for unemployment insurance, each of which has elements of merit urged by divergent schools of reputable thought. (Ib.).

"At the same time, the disheartening results of 50 years of agitation for unemployment insurance prove conclusively that there will be no substantial action unless the Federal Government plays its part. Less than one-half of 1 percent of the workers in this country are covered by the much-heralded private and voluntary plans for their protection. And so paralyzing has been the fear of unfair competition by backward States that only Wisconsin dared to proceed in splendid isolation by enacting an unemployment-insurance law. The very fact that four other States have taken the same course in the short period of time since the inception of this measure is the best token of the validity of Federal encouragement." (Ib. pp. 9283-84)

Senator McNary entered into an exhaustive analysis of the history of the times, discussing the increase within a hundred years of the expectancy of life from 39 to 60, the advance of the machine age which relegates to the shadows the skilled and elderly artisan; the constantly decreasing population of the farms balancing the increasing urban life; the decrease of families and the advent of labor-saving devices. But the inevitable march of progress compels us to re-adjust our economic life to the new industrialization and mechanical advancement. At present wages the average workman cannot

save enough for old age. "It must be evident to the most determined individualist", said the Senator,

> "that in most instances old-age dependency in the United States is not due to individual maladjustment, but to social and economic forces which the individual cannot hope to govern." (Ib. p. 9542)

Once the magnitude of the problem is clearly recognized, once we face squarely the fact that the problem is no longer the individual's but the nation's to master, "we shall set ourselves to the task of its solution". (Ib.)

Senator Harrison undertook briefly to outline the purposes of the measure. It is designed to meet three major problems: (1) pensions for the aged and blind, (2) provisions for child welfare, and (3) unemployment insurance provisions. (Ib. p. 9267)

Senator Wagner observed that it was obvious that the 3 per cent. payroll tax could not be a panacea for the burden of unemployment such as we have borne in the past. Its protective features would cover only twenty-four million of the forty-eight million gainfully employed. After a waiting period of four weeks the unemployed would receive benefit payments for fifteen weeks, not in excess of $15.00 per week. If the rate of unemployment were the same between 1936 and 1950 as it was between 1925 and 1935, the total wage and salary loss in the covered group of workers would be $75,000,000,000, or three times the sum available for the 3 per cent. payroll tax. (Ib. p. 9284). But this analysis overlooks the purpose and indirect effects of unemployment insurance. It is designed to supplement the public works projects, to provide for intermittent, short term unemployment,

> "a remedy that is more dignified, more humane, more certain, and more economical than emergency relief, with

its inflated ballyhoo and its deflating effect upon the moral stamina of the recipients." (Ib.)

The mere focus of business attentiveness upon the problems of the jobless will tend to prolong work, as the study of life insurance has tended to increase the length of the average life. A provision in the measure requires that the tax rebate shall be used to encourage a close connection between state job-insurance laws and unemployment offices.

The measure permits the employer with a good employment record to offset against the federal tax not only the state tax he has paid but the amount of the reduction he has won. But the bill takes great pains to prevent any state from circumventing the (federal) law by allowing additional credits without setting up adequate safeguards against unemployment. (Ib.)

The Senator discusses the stabilizing effect upon industry which unemployment insurance will have in times of stress. For instance, the 3 per cent. tax would have provided ten billion dollars between 1922 and 1933. It would have produced an accumulative reserve of two billion dollars in 1929, the prompt release of which would have mitigated and abbreviated the down-swing of the business cycle. (Ib.)

Senator Schall of Minnesota noted that beginning January 1, 1936 a payroll tax of 1 per cent. would begin to finance unemployment insurance, which would amount to $200,000,000, which would be doubled in 1937. (Ib. p. 9537)

(2) The Act as a Tax Measure

(a) Messages of the President

In his message of June 8, 1934 the President said that he believed "that the funds necessary to provide this [unemployment and old-age] insurance should be raised by contribution rather than by an increase in general taxation". (Cong. Rec., Vol. 78, Pt. 10, p. 10771)

In his message of January 17, 1935 transmitting the report of the Committee on Economic Security the President said that, with respect to unemployment insurance, he had concluded

> "that the most practical proposal is the levy of a uniform Federal pay-roll tax, 90 percent of which should be allowed as an offset to employers contributing under a compulsory State unemployment-compensation act. . . ." (Cong. Rec., Vol. 79, Pt. 1, p. 599)

(b) The Report of the Committee on Economic Security

The Committee on Economic Security referred frankly to the "tax-credit device" which it preferred to one in which the tax would be wholly collected and then remitted to the states as grants-in-aid; because

> "under the latter system the States would not have self-supporting laws of their own, and as with all compensation having its source in Federal grants there would be great and constant pressure for larger grants exceeding the money raised by the tax, with a consequent confusion of compensation and relief." (Report of the Committee on Economic Security, p. 17)

In making the recommendations as to the "technique" of establishing a Federal-State unemployment system the Committee proceeds in the conviction that its purpose could be most promptly and effectively accomplished by federal legislation which would, among other things, (1) produce uniformity in the burden by levying a payroll tax, (2) stimulate the passage of compensation laws by the states, by allowing a credit against the federal tax for contributions paid under state laws (Ib.). This credit should be allowed only if the state is cooperating with the Federal Government in the administration of unemployment compensation, expending the money raised solely for benefits, and is depositing all contributions as collected in the Unemployment Trust Fund. (Ib. p. 18)

Additional credits are recommended on the reserve account and guaranteed employment account, which finds its place in Section 910 of the Federal Act. (Ib.)

(c) Hearings Before the Committee on Ways and Means of the House

The Committee on Ways and Means (as well as the Committee on Economic Security) had before it the choice of the grant-in-aid system or the Federal-state system. Under the first the Federal Government would collect the entire tax and by grants of 80 to 90 per cent. of the tax subsidize the states to enact measures submitting control in all particulars to the federal authorities.

The national system was put aside apparently with much regret. Mr. Leiserson commented that everybody knew

> "that regulating working conditions has been up to the present always considered a State system." (Hearings before the Committee on Ways and Means, p. 400)

So what appeared to be the lesser of the two evils was adopted (Sections 901, et seq.).

Miss Perkins told the Committee on Ways and Means that the Committee on Economic Security believed that "the device of utilizing the taxing power of the Federal Government", as a method of raising revenue for the government and for encouraging and stimulating the passage of proper and suitable unemployment-insurance laws, was the best scheme, the best method, which the Committee could recommend at the time (Ib. p. 183). Mr. Vinson of Kentucky asked Miss Perkins if the Committee gave any consideration to the matter of securing this money from sources other than payrolls; in answer to which Miss Perkins said that the Committee did consider the matter of securing funds out of general taxation; that a part of the whole system could be financed, if desired, by contributions on the part of the Government, made possible "by increased general taxation, either income, inheritance, or any other form of taxation". (Ib. p. 205) The Committee gave consideration also to the matter of imposing a tax on labor-saving machinery for unemployment insurance, but most of the members decided to abandon such a plan as a practicable theory at the time. "Although theoretically it [such a theory] is a very enticing thing, it is extremely difficult to estimate in advance how much money that would bring in". The actuaries found it impossible to tell in any given year whether a labor-saving machine would be introduced that would put so many thousand men out of work, or whether one would not be introduced in that year but ten years later (Ib.). The Committee was directing its thought toward unemployment insurance and old-age annuities; and

> "in devising the taxes, we tried to indicate these taxes in the spot which would develop the necessary income and

the necessary impetus to the enactment of State laws in the matter of unemployment insurance. (Ib. p. 207)

* * * * *

" . . . With regard to the unemployment insurance, we do not believe that this is an appropriation out of general taxes. The taxes raised by the 3-percent excise tax on pay rolls will not be used to pay unemployment insurance or unemployment benefits." (Ib. p. 208)

The tax recommended

"is not the assessment of a tax out of which benefits will be paid. It is the assessment of a tax on a person who is not paying a premium out of which benefits will be paid." (Ib.)

Mr. Lieserson felt that the objection to the subsidy plan was sound; that the Supreme Court had said in the Child Labor Cases that Congress could not "under the guise of a federal regulation" regulate conditions within the states; a ruling which likewise applies to the attempt of Congress to regulate the industrial relationships within the states (Ib. p. 400). But, Mr. Lieserson hoped:

" . . . . May be they [the Supreme Court] will not hold that now. But I felt, and most of the members of the committee felt, that we cannot jeopardize this step that needs to be taken now on any theoretical argument about what the Supreme Court might do or might not do." (Ib. pp. 400-1)

Mr. Hill, a member of the Committee, adverted to the grant-in-aid system of constructing highways; describing the grant as a pure subsidy arising from general taxes and paid out of the treasury. He added, however, that the subsidy for roads

"does not involve, of course, the question of levying these taxes upon employers or employees to raise the fund." (Ib. p. 413)

Mr. Leiserson replied that the highways could be connected with interstate commerce, whereas it

"would be pretty difficult to connect manufacturing of, let us say, pocketbooks within a State to interstate commerce. (Ib.)

* * * * *

"the Federal law is designed only to collect this tax in order to get the States to enact certain laws— . . . ." (Ib. p. 418)

Mr. Morgenthau, Secretary of the Treasury, recognized that the tax would fall ultimately on the mass of the population, but emphasized that the effect of these taxes is to provide a substitute form of savings

"from which our workers will receive far greater and more assured benefits than from many other forms of savings now in existence. These taxes, in other words, will not be a net deduction from workers' incomes. They will release funds, as well as relieve anxiety, hitherto directed toward the universal problem of providing against one's old age." (Ib. p. 900)

Mr. Morgenthau thought it entirely possible that improvements in the revenue system would permit a reduction of taxes on "consumption goods", thereby returning to the mass of the population in this form

"what is taken from it in the form of pay-roll and earnings taxes." (Ib.)

Senator Hastings, appearing before the Committee, asserted that a method patterned on the road grant-in-aid plan

provided "the only constitutional way in which it [the institution of the unemployment system] can be done"; that he was quite sure in his own mind that "the Federal government cannot [constitutionally] impose this kind of a tax". (Ib. p. 956) But the Senator added, he had not given very careful study to the question of the constitutionality of the tax because his experience in the Senate had led him to believe that it was not worthwhile to argue constitutional questions; if the Senate favors a measure it goes ahead frequently and ignores the question of constitutionality. (Ib. p. 959). But he goes upon the theory that the Federal Government can tax only for governmental purposes; that if it were the primary duty of the government to take care of the unemployed, the Constitution would permit the passage of this measure; but such is not the duty of the Federal Government; it is the primary duty of the state. (Ib.)

Mr. Emery felt that upon a serious examination it would be found that the proposed tax is not a tax at all; it does not give a legal basis for a tax, and that there are very serious objections to an exercise of congressional power of this character for this purpose. (Ib. p. 1020)

Mr. Emery discussed the case of *United States v. One Ford Coupe Automobile*, 272 U. S. 321 (71 L. ed. 279), quoting from the court's opinion that the use of the word "tax" did not prove conclusively that the burden is imposed by the tax. Such is a matter for judicial determination after the legislature has exercised its discretion. He referred to the *Child Labor Tax Case*, 259 U. S. 20 (66 L. ed. 817), *Stafford v. Wallace*, 258 U. S. 495 (66 L. ed. 735), and *Hill v. Wallace*, 259 U. S. 44 (66 L. ed. 822), as authority for the principle that so-called taxes which undertook to regulate the conduct of the states were not in fact taxes. He distinguished

the case of *Florida v. Mellon*, 273 U. S. 12 (71 L. ed. 511), in which the court pointed out that

> "a tax is the compulsory taking of the private property of the citizen for the purpose of the support of the sovereignty or government which levied the tax. That is the test of what constitutes a tax." (Ib. p. 1025)

The difference between the estate tax and the payroll tax is that in the first instance the credit is not dependent on the adoption by the state of a policy proposed by Congress; in the second place, unless the state puts into effect the unemployment plan with its standards fixed by Congress, the taxpayer receives no credit for the state tax. Congress did not enact the estate tax for the purpose of endeavoring to persuade the states to enact a like tax. Only three states in the Union lacked such a tax (Ib. p. 1026). If by the use of the taxing power an attempt is made to impose a penalty or to compel an independent sovereign or individual to pursue a certain line of conduct, if what is done is the endeavor to exercise a forbidden power under the color of a permissive power, the exercise of the latter cannot be sustained. If the federal tax is intended not to raise revenue but to control the local conditions of production, the tax is invalid. The purpose of the tax is not to raise revenue for the Federal Government; for if it were successful in raising revenue the bill would be a failure. The proposed statute therefore, as it is worded, defeats its own purpose.

> "It would be, in this instance, you gentlemen will clearly admit, a complete failure if it succeeded in raising revenue which the Federal Government retained, instead of raising revenue which the State recaptured if it conformed to the requirements imposed by the Federal Government, carrying out the will of Congress, as laid down in legislation. Therefore, I say it is a regulatory statute." (Ib.)

An examination of the legislation piece by piece is convincing that it is upon its face pointed to one result:

> "to secure State legislation upon a subject on which the States have not legislated and which under the tenth amendment is not only under their control but which they are free to accept or reject." (Ib. p. 1027)

And it is here proposed that unless the states act, a tax will be levied upon their citizens which the states cannot recover and which will lessen their taxing power.

> "So, paradoxical as it may seem, the success of this bill depends upon its failure to produce revenue for the Federal Government." (Ib.)

Mr. Emery, in answer to questions from the Committee, stated that in the instance of the estate tax the taxpayer could secure his credit as a result of his own act, while under the present bill no act of the employer could recover his credit, such being dependent entirely upon the act of the state of which he is a citizen (Ib. p. 1029). While the tax (or 10 per cent. thereof, dependent on the action of the states) goes into the federal treasury subject to appropriation for any purpose, the major purpose of the bill according to its title is "a bill to alleviate the hazards of old age, unemployment, illness, and dependency, to establish a social insurance board in the Department of Labor, to raise revenue, and for other purposes", while the minor purpose is revenue (Ib. p. 1030).

(1). Desirability of Placing Tax in Separate Bill

Mr. Green advised that the grant-in-aid plan be adopted so as to lessen the question of constitutionality, asserting that Congress has power to appropriate money

as grants-in-aid for unemployment insurance on such terms as Congress may establish, as it has done in respect to public roads (Ib. p. 389).

Mr. Epstein advised separate bills—one as a tax measure. In the other Congress would say to the legislatures of the states that if they want protection for their people (which the employers do not want but which the governor and the legislature do want); if they adopt a decent bill that will comply with federal standards as to minimum benefits, a "real guarantee of good administration"—if they guarantee that they are going to administer such a system rightly "we will turn over to you the money we collect from your state". (Ib. p. 563). The witness stated that this was "more constitutional . . . . logical and legitimate." The governors and the legislatures will see that the tax is enacted. (Ib. pp. 563-4). His suggestion as to splitting up the measure into two bills is based on the idea that

> "it is safer constitutionally to separate the revenue-raising part from the disbursement part. . . . " (Ib. p. 564).

The witness expressed his willingness to do anything to minimize constitutional problems. From his bitter experience he knew that if the court nullified a social law, a generation is lost trying to change it, as for instance, the child labor amendment (Ib.). By separate bills one step is taken away from constitutional troubles. The entire plan in the same bill would permit the court to say "you set up that tax for a specific purpose", the answer to which would be, if separate bills were provided:

"... 'Why, we set up the tax, that is all. That was just the revenue for the Government, general revenue. We happen to be disbursing an equal sum in a separate bill.' Well, that is another story." (Ib. p. 565)

Dr. Frank P. Graham, Chairman, Advisory Council to the Committee on Economic Security, likewise advocated a tax bill separate from the grant-in-aid type, to avoid the strain of carrying sufficient national standards and other regulations required by the interstate and national nature of industry and employment.

"... Such a joint act more seriously raises the question of constitutionality." (Ib. p. 881)

Senator Hastings undertook to draw a distinction between using general funds for these purposes and laying a special tax for the particular purpose. He did not think the Federal Government could lay a special tax for the purpose of taking care of the unemployed and paying it out of its own funds. If funds are collected for general purposes, they might be used for the purpose of the bill, and the constitutional objection would be lessened; for it is very difficult to raise the question as to the disposition Congress makes of the general funds. At least, the question of levying a tax for a special purpose would be eliminated (Ib. p. 960).

Mr. Leiserson, Chairman, National Mediation Board, called the 3 per cent. tax a premium which is paid for unemployment insurance; for the principle is insurance (Ib. p. 409)

(d). Report of the Committee on Ways and Means of the House

The report states that practically no objections have been made to the imposition of the taxes levied in the bill. Such objections as have been offered overlook the fact that the initial rates are very low (Ib. p. 16). That the tax is imposed on employers is indicative of the conviction that employers should bear at least a part of the cost of unemployment compensation, just as they bear the cost of workman's compensation. (Ib. p. 8)

The views of the minority deserve attention. It is stated that:

> "Titles III and IX taken together provides for what is commonly known as 'unemployment insurance.' The incidental revenue collected under title IX is intended to offset the payments made under title III. (Ib. p. 43)
>
> * * * *
>
> "The best legal talent that the Attorney General's office and the Brain Trust could marshal has for weeks applied itself to the task of trying to bring these titles within constitutional limitations. Their best effort is only a plain circumvention. They have separated the proposition into two titles. This separation is a separation in words only. There is no separation in spirit or intent. These two titles must stand or fall together." (Ib.)

The minority view as to the purpose of the 10 per cent. tax retained by the Government is not different from that of the majority.

(e). Hearings Before the Committee on Finance of the Senate

Miss Perkins stated that all the federal government does is to place an ordinary excise tax upon the payrolls which the employer must pay. He may however offset against that tax up to 90 percent. any contribution he pays under a state compulsory unemployment insurance system. The reason for not offsetting the 100 percent. is to have the 10 percent, remaining for administration; a percentage supported by the experience of other countries (Hearings before Committee on Finance of the Senate, p. 112)

Miss Perkins stated that the state could assess an employer at any rate it wished to fix, different from the rate imposed on other employers, for the reason that "This is not a tax, you see; it is an assessment to a fund." (Ib. p. 125)

Senator Barkley raised an objection to the use of a tax for general government expenses which had been collected for the purpose of unemployment insurance as to which Miss Perkins insisted that the tax was not collected for unemployment insurance; that it is a general tax; that

> " . . . . . It is assumed that the Federal Government has an ample use for taxes and is always seeking new sources of revenue." (Ib. p. 127)

Senator Barkley replied that

> " . . . . . We would not be levying this tax except to provide for unemployment insurance." (Ib.)

In reply Miss Perkins answered that the purpose was to provide general funds for general purposes and "to encourage the states to pass unemployment insurance laws of their own". Senator Barkley pursued his discussion as to the use of this particular tax, levied for the purposes of unemployment insurance, for the support of the army and navy, diplomatic corps or some other normal branch of the federal government, which Miss Perkins countered by saying that it did not matter how this particular money was used, just as it did not matter whether she paid her rent out of her savings bank or her salary. "That is your money," replied Senator Barkley. (Ib.)

Miss Perkins objected to making this a special fund if it were ever to be returned to states for paying unemployment benefits, for each state would be thus encouraged to postpone the passage of its own law. Senator Barkley again inquired if Miss Perkins objected to holding the amount of the tax in a special fund to give the states a chance to pass the required laws, twelve states not having legislatures until 1936, the states complying being entitled to their share of the fund? Miss Perkins answered by saying that 44 states have legislatures in 1935, that the amount will be much smaller as 1 per cent. will probably be substituted for 3 percent. the first year. (Ib. p. 134)

Mr. Green, in discussing the constitutional features, raised the question whether Congress can use its taxing power "to indirectly compel a state to do something"; a question involved in the child labor laws. The plan suggested by Mr. Green therefore would be for the federal government "to prescribe the standard and require the states to conform to that standard. . . . ." (Ib. p. 159)

Dr. Witte: One of the reasons for the low rate of

the old-age tax is that a tax is being imposed for unemployment insurance purposes simultaneously. (Ib. p. 196). If a system of unemployment insurance were devised and its administration vested in the national government, it could not rest on the taxing power alone; the question of the use of the regulation of interstate commerce would arise. But under the plan submitted [which was adopted in substance] the question does not arise. (Ib. p. 223) The money collected by the state is not a tax; it is a contribution or a premium. (Ib. p. 239)

Mr. Leiserson remarked that if we start with the premise that we want to use the principles of insurance, the first question is, how much premium shall we pay for the insurance? The bill provides that there shall be a 3 percent. tax "which really is the premium". (Ib. p. 262)

Mr. Harrington, of Fyffe & Clarke, General Counsel for the Illinois Manufacturers Association, said that the bill involved the equivalent of a general sales tax,—"not for the general purposes of Government, but for special purposes." (Ib. p. 688)

Mr. Reyburn, National Retail Dry Goods Association, disagreed with the Secretary of the Treasury who advocated a payroll tax for the purposes of the bill. Many merchants and others felt the charge to be a proper one against general revenues of the states and nation. (Ib. p. 706)

Professor Paul H. Douglas, Department of Economics, University of Chicago, referring to the few standards to which the state systems were required to conform assumed that this was so as to avoid a declaration of unconstitutionality on the ground that Congress

". . . . . was using the taxing powers for a purpose which was primarily if not exclusively regulatory. . . . . ." (Ib. 892)

Mr. Webster, representing the Connecticut Manufacturers Association, Bridgeport, Conn.: Reduced to their elementals the measures propose by the use of taxing power to achieve by indirection an end that could not be legally accomplished directly. (Ib. p. 897-8)

Mr. Emery, Counsel, National Association of Manufacturers, Washington, D. C.: The very purpose of the legislation upon its face is to compel the legislative action of the states. It is not the purpose of the legislation on its face, to raise revenue for the general government. On the contrary the success of the bill as a revenue raiser would be the defeat of its purpose as social legislation. In no other measure has Congress provided on the face of its tax measure the means of defeating its own revenue. (Ib. 925) If all the states complied with the statute the government would be deprived of the revenue raised by the tax, observed Senator Barkley; with which Mr. Emery agreed, adding that the government would retain ten percent. which on its own calculation would cover the cost of administration. (Ib. p. 927) It is unfortunate, added Senator Barkley, that to induce the states to act, it is necessary to offer an inducement or impose a penalty. (Ib. p. 928)

On the face of the bill, said Mr. Emery, it is obvious that the regulations suggested are not for the purpose, incidentally of assisting in the collection, administration or enforcement of the tax, but that the tax was levied with no intent to secure the revenue but with the major purpose of securing action by the state.

"So as a general conclusion we point out that on the face of this legislation, the success of it as it is written, as its proponents assert, as its terms identify it, all go to the proposition that as a revenue measure it must fail in order to be successful as a social measure. In other words it will fail exactly to the degree contemplated by its proponents if it raises revenue instead of procuring regulation by the States, and thus carries on its own face the means of defeating its own revenue objective." (Ib. p. 930)

Miss Perkins: The reason for not offsetting 100 percent. is to have 10 percent. for administration, which according to the experience of other countries is proper and suitable. The tax that goes into the Treasury is available for appropriation by Congress. There is no advantage to the state in allowing employers merely to pay the federal tax; for the state would then have to pay in the form of relief for distress due to unemployment, or something else. The advantage to the employers will be to have a compulsory unemployment insurance law in every state to which every employer will be contributing. Such funds will be used for regular benefits to the unemployed persons in that state. (Ib. p. 112)

(1). Desirability of Placing Tax in Separate Bill

Mr. Green explaining his grant-in-aid plan, said that the government could collect the tax and put it into the Treasury. Then the states are given to understand that if they pass unemployment insurance legislation which measures up to standards set by Congress, the federal government will subsidize them to the extent of the tax paid by the different states. (Ib. p. 156) The subsidy would be provided by separate and distinct bill. (Ib. p.

157) The difference between the two said Mr. Green, is one of constitutionality. Under the subsidy plan Congress can fix its own standards. Under the federal-state (or tax-credit) plan the state fixes its own standards without any control by Congress. (Ib. p. 158)

In the Report of the Advisory Council to the Committee on Economic Security (Ib. p. 246) the Council recommended the subsidy plan in the belief that it had its advantages (a) in dealing on a nationwide basis with situations crossing state boundaries; (b) in establishing and maintaining throughout this country the essential minimum standards; (c) in removing all obstacles to bringing the reserve funds into federal control; (d) it would run less risk of unconstitutionality than the Wagner-Lewis type when the latter is equally equipped with provisions of minimum standards for the states; (e) the federal control of funds and the power to allow or disallow grants, would be an important element in national control; (f) it would lend itself more readily to developing a national system should that become advisable.

The minority of the Committee favored the Wagner-Lewis type as having the following advantages: (a) It permits experimentation by the states; (b) it secures the equalization of competitive costs; (c) it permits the requirement of all essential uniform standards, such as that the money collected must be spent for unemployment benefits, the custody of the funds, and others; (d) it secures the advantages of federal supervision with decentralization of administration, and local responsibility; (e) it avoids the hazards of an annual appropriation by Congress; (f) it raises substantially the same constitutional questions as the subsidy type of bill, but has the great merit that should it be held

unconstitutional, the state laws would be complete in themselves and would remain operative; (g) it will result in federal and state legislation this winter, while 44 state legislatures are meeting and there is strong public support, which is doubtful under the subsidy plan, particularly if many detailed standards to which the state laws must conform are inserted in the federal act. (Ib. p. 227)

Francis D. Tyson, Professor of Economics, University of Pittsburgh, thought it well from a constitutional standpoint to separate the tax feature from the payment of subsidies. He felt that a larger degree of supervision by the federal government would assure a greater measure of uniformity so as to eliminate the obstacle of competition, which would persist if the states were free to fix their own standards of rates. (Ib. p. 739)

Senator King introduced a memorandum by Professor Paul H. Douglas who felt that the fear of constitutionality could be lessened by the passage of two acts. The power to tax is certain. There are almost no limitations upon the spending powers of Congress. If the system under one bill should be declared unconstitutional he suggested that

> ". . . . . it should be able to run the constitutional gamut if they were put asunder." (Ib. p. 895)

In a joint statement submitted by the Washington Branch of the American Association for Social Security the tax-credit bill was criticized (1) as lacking essential standards, whereas the subsidy plan permitted maintenance of basic standards; (2) as permitting a multiplicity of diverse and uncoordinated state programs; (3) as involving a duplication of tax collecting machinery; (4) as controlling the states only by penalizing the employer

through cancellation of tax credits; (5) for requiring state funds to be turned over to the federal treasury, a requirement with which some states could not constitutionally comply.

Dr. Witte thought the difference between the subsidy system and the tax credit system recommended in the bill not very great. It relates merely to the manner in which the money is brought into the federal treasury. If the state collects, it is not a tax but a contribution or a premium rate. (Ib. p. 239)

(2). The Act Provides "Compensation" Rather Than "Insurance"

Mr. Green thought the plan an insurance measure. (Ib. p. 169) Mr. Leiserson felt that casual labor could not be handled on the principle of insurance, but this principle was most important in respect to the vast majority of wage earners that ordinarily support themselves by labor and their jobs. (Ib. p. 260)

Senator Black insisted that because some one else paid the premium the result was none the less insurance, with which Mr. Leiserson disagreed on the ground that if half the premium came from the higher income brackets the beneficiaries would be taking money from a place where the risk is not located and there would be no reason for distinguishing the different kinds of unemployed people when they are given money in this fashion. (Ib. p. 278-9)

Mr. Elbert, a member of the Unemployment Insurance Committee to the Industrial Advisory Board, felt that unemployment insurance is not a charitable enterprise; it is meant to be and should be, self-supporting.

Who believes it wise to break up the large insurance companies into 48 small companies with separate administrations and varying scales of premiums and benefits? (Ib. p. 830)

Mr. Frederick H. Ecker, President of the Metropolitan Life Insurance Company, felt that the application of insurance principles to the individual risk of unemployment was absolutely hopeless; that the principle of compensation for unemployment within certain limits of time and money is practical and sound. He recommended that the word "insurance" be dropped and "unemployed compensation" be used instead. (Ib. p. 848)

Mr. Marsh, representing the People's Lobby, felt also that "insurance" is a misnomer, for unemployment could not be put on an actuarial basis. The length an individual employer continues in business cannot be relied on, nor can he be held responsible to maintian people if he is bankrupt himself. (Ib. p. 962)

(f). Report of the Committee on Finance of the Senate

The Committee sees nothing "revolutionary in any of the innovations in this bill." Every measure proposed is in accord with the "tried American institutions and traditions." (Senate Report No. 628 p. 28)

The Committee likens the "tax offset device" to the provision in the Federal estate tax law. (Ib. p. 12)

(g). Statements made in the House

Mr. O'Connor, the acting floor leader, said the bill had no privileged status; that while it contained partial

revenue features, it did not come within clause 45 of Rule XI which makes bills raising revenue in order. (Cong. Rec. 79, Pt. 5, p. 5460)

Mr. Jenkins asked why the Rules Committee found it necessary to bring the bill up for consideration under a special rule if the bill were rightly a revenue bill? For a revenue bill properly reported by the Ways and Means Committee is a privileged bill and needs no special rule. (Ib. p. 5684)

Mr. Doughton said that the Social Security Act was one of the most important measures ever placed before Congress for its consideration. While it is designed to enhance the security of the American worker and to provide a larger measure of social justice, it does so within the scope of our economic order. He challenges anyone to say that insurance against these social dangers is contrary to our institutions, or that it will undermine the integrity of the American system. (Ib. p. 5468) If the federal government were to go further and take over the entire problem of old age pensions it would be contrary to our fundamental political institutions and would place upon the federal government a tremendous financial burden "without the protection of local vigilance which will prevail if local taxpayers are required to bear part of the cost." Our constitutional limitations prevent us from setting up a national system of old-age insurance, which is unquestionably the best basis. (Ib. p. 5470)

In discussing Title IX Mr. Doughton related the annual rates of the tax, the credit allowed employers, said that a "few minimum requirements" are imposed which state plans must satisfy in order to qualify for credit, the principal one being that the fund shall be one solely for

the payment of unemployment benefits; that "In general, the states are left free to determine the provisions of their unemployment-insurance laws, the scale of benefits which they pay, and the other features." (Ib. pp. 5475-6)

The discussion of the measure as a tax measure now centers around Title II providing for federal old age benefits, and Title VIII, imposing a tax with respect to employment. There was little discussion in the House under this head as to the unemployment compensation features (Titles III and IX). The trend of debate as to TITLES II and VIII may therefore be applied to TITLES III and IX; for the plan of separating appropriations from taxes is the same in respect to the subjects, both of old-age pensions and unemployment compensation, and the taxes sought to be imposed for these purposes. Mr. Treadway, as he had repeatedly done in committee hearings, attacked Titles II and VIII as setting up an old-age retirement system based on reserves imposed on industry under the guise of a tax. (Ib. p. 5530) He charged that "The federal government has no express or inherent power under the Constitution to set up such a scheme as is proposed"; that the administration and the Democratic majority of the Committee had been working for months trying to give Titles II and VIII some color of constitutionality. "They are not very proud of their handiwork, but they think it is in the least objectionable form from the constitutional standpoint." (Ib. p. 5530)

Mr. Jenkins said that the government is being put into the insurance business on a tremendous scale; that in the Ways and Means Committee the proponents had done their best to remove the unconstitutional features of the measure, "but they have failed". (Ib. p. 5682) He

called attention to the fact that the majority report of the Ways and Means Committee says not a word about the constitutionality of Titles II and VIII. (Ib. p. 5682)

Mr. Robsion was advised that many lawyers on the Ways and Means Committee and other lawyers were inclined to think the bill unconstitutional as it was then before the House; that if given an opportunity he would vote to strike this provision from the bill and have it re-referred to the proper committee for further study and preparation, so that the House might have a better bill before it. (Ib. p. 5696)

Mr. Harlan argued at length that the separation between Titles II and VIII preserved both; that there is no precedent under which the courts could declare Title II unconstitutional; that it would be a futile act to provide funds from the general treasury to carry out Title II and later re-enact Title VIII with no physical connection with the Social Security Act. He supported the doctrine that if states could not administer necessary regulations (as they cannot do with unemployment relief), and that if this function was neither expressly excluded from the regulating power of the federal government nor expressly restricted to the states, it was the duty of the federal government to assume control as being the only agency capable of protecting those rights which the Constitution reserved to the people. (Ib. p. 5700)

Mr. Monaghan of Montana asserted that the Supreme Court would read and interpret the bill in its entirety and according to the language found therein. (Ib. p. 5701)

Mr. Cox of Georgia said that the thing that disturbed him was that apparently all thought in Washington had

been directed toward centralization of government, and most of what has and is being done apparently is intended to produce that result. (Ib. p. 5780)

Mr. Reed of New York:

"The provisions have been cut, carved, sawed, assembled, and reassembled in an effort to make it constitutionally presentable to the Supreme Court. A resort has finally been had to an ingenious mechanical arrangement of title II and title VIII as the most likely means of diverting the attention of the Supreme Court from the real issue, viz, that these two titles are the same in purpose, spirit, intent and substance. This clever scheme may succeed, but I do not believe this mechanical subterfuge will deceive the Court. If the purpose sought to be accomplished does escape the scrutiny of the Court because of the mere juggling of titles, then other police powers reserved to the States may in the same manner be taken over and operated by the Federal Government without let or hindrance. (Cong. Rec. Vol. 79, Pt. 6, p. 5891)

* * * *

"The best legal talent the administration has been able to engage from the departments and elsewhere has endeavored to so frame title II, change its title, distort it, and put the tax features in title VIII, to mislead and deceive, if possible, the Supreme Court of the United States. I stated yesterday, and I state again today, that the members of the committee in their conscience know that title II and title VIII are unconstitutional. They know they are trying to set up as a Federal activity a police power that is reserved to the States." (Ib. p. 5991)

Mr. Huddleston of Alabama:

> "Mr. Chairman, unusual as the practice is in these times, I wish to make an appeal to reason and to logic. This bill provides for a system of State aid for which there is no warrant in the Constitution and which can be sustained, as the Supreme Court has decided in the Massachusetts case, merely because there is nobody eligible to call it in question. It provides for a system of old-age pensions for which there is no warrant in the Constitution, and upon the soundness of which men of ability and character might well find themselves in radical difference." (Ib. p. 5983)

Mr. Treadway charged that Titles II and VIII are just as closely related as a house and its foundation. Neither is intended to stand by itself. The money raised by the tax is not intended for the support of the government, but to pay the benefits provided under Title II to the same employees who are taxed under Title VIII. He calls attention to the fact that the report of the majority makes no reference to the connection between Titles II and VIII because they

> "know that the Supreme Court is eventually going to look at that report to see what the intention of Congress was in setting up these titles. They purposely omitted any reference to the connection between the two, because they wanted to try to delude the Supreme Court. I do not think the Court is going to be deceived, however. It is not going to let Congress do in a backhanded way what it cannot do directly." (Ib. p. 5530)

Mr. Jenkins referred to the brief of the Attorney General, which he said appeared nowhere in the record in the proceedings of the Committee; nor did the long speeches

consuming nearly two days by representatives of the Attorney General's office. (Ib. p. 5683) Mr. Jenkins lamented the fact that the Attorney General did not in his brief give both sides of the question, saying that the latter was not justified in taking a partial position.[1]

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1 Mr. Cooper introduced the Attorney General's brief in the record. It erroneously appears as a part of his remarks. The brief begins on page 5782 of Congressional Record, Vol. 79, Part 5, column 2, line 27, beginning "The purpose of this memorandum," and ending on page 5784, column 2, line 42, the last paragraph being "It follows hence that those Titles of the bill," etc.

The brief of the Attorney General cites familiar cases; but they are not applicable to this situation. In each one the power to tax is not disputed. *Veazie Bank v. Fenno*, 75 U. S. (8 Wall), 533 (19 L. ed. 482), imposed a tax of ten per cent on the amount of notes of any state bank paid out by any banking association, but this tax the Court said was " . . . in the exercise of undisputed constitutional powers . . ." [549 (488)] Likewise in *McCray v. United States*, 195 U. S. 27 (49 L. ed. 78), it was undisputed that the tax on oleomargarine "was within a power conferred . . ." [54 (95)] With a prophesy which is marked the Court said that if a case were presented where the abuse of the taxing power was so extreme as to be beyond the principles stated in this case, and where it was plain to the judicial mind that the power had been called into play

> "not for revenue but solely for the purpose of destroying rights which could not be rightfully destroyed consistently with the principles of freedom and justice upon which the Constitution rests, that it would be the duty of the courts to say that such an arbitrary act was not merely an abuse of a delegated power, but was the exercise of an authority not conferred . . ." [64 (99)]

In *Billings v. United States*, 232 U. S. 261 (58 L. ed. 596), it was not seriously denied in argument that the tax levied was intended to be an excise tax upon foreign built yachts. [279 (604-5)] In *Brushaber v. Union Pacific RR Co.*, 240 U. S. 1 (60 L. ed. 493), the power of Congress to impose an income tax was not questioned; it was the progressive feature of the tax which was attacked. [25 (504)] *United States v. Doremus*, 249 U. S. 86 (63 L. ed. 493), turned on the undisputed power of Congress to select the subjects of taxation and, as the power to impose the excise tax was not questioned, the Court stated that it could not look into the motives of Congress to ascertain what may impel the exercise of the taxing power. [93 (496)]

". . . If the legislation is within the taxing power of Congress—that is sufficient to sustain it . . ." [94 (496)]

In *Massachusetts v. Mellon*, 262 U. S. 447 (67 L. ed. 1078), the statute under attack "imposes no obligation, but simply extends an option which the state is

Mr. Knutson said that the tax (for annuities) was not for the purpose of providing revenue for the federal government but simply an enforced contribution for the benefit of a certain class of persons. (Ib. p. 5543)

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free to accept or reject . . ." [480 (1082)]. The distinction between the Maternity Act and the Federal Act now before the Court is obvious. Appellants here do not sue merely as taxpayers as did Frothingham. [485 (1084)]. Appellants occupy the position in which the Supreme Court found the processing taxpayer when it afforded him relief.

Florida v. Mellon, 273 U. S. 12 (71 L. ed. 511), likewise raises no question as to the power of Congress to impose a tax on inheritances [17 (514-15)], a field which it may constitutionally occupy irrespective of the result on the finances of the states.

The Attorney General ignores entirely the principle that in *A. Magnano Company v. Hamilton*, 292 U. S. 40 (78 L. ed. 1109), involving a tax on butter substitutes imposed by a state legislature, the tax was "a tax of a kind within the reach of its lawful power . . ." [44 (1114)].

The advice of the Attorney General to the committee: That if Congress would separate the tax from the appropriation no one could raise the question and it would be "reasonably safe to assume that the social security bill, if enacted into law, will probably be upheld as constitutional" (Con. Rec. Vol 79, Pt. 5, p. 5784) is answered by the case of *United States v. Butler*, 297 U. S. 1 (80 L. ed. 477). In that case the argument was made by the government that the Court could look at the Agricultural Adjustment Act as two separate laws: One imposing a tax and the other appropriating the money; and that from this view neither could be attacked. As to this the Court said that the sole object of the legislation was to restore the purchasing power of agricultural products to a parity with that prevailing in an earlier day; to take money from the processor and bestow it upon farmers who would reduce their acreage for the accomplishment of the proposed end, and, meanwhile, to aid these farmers during the period required to bring the prices of their crops to the desired level; that in this plan of regulation the tax plays an indispensable part.

> " . . . . Passing the novel suggestion that two statutes enacted as parts of a single scheme should be tested as if they were distinct and unrelated, we think the legislation now before us is not susceptible of such separation and treatment.
>
> "The tax can only be sustained by ignoring the avowed purpose and operation of the act, and holding it a measure merely laying an excise upon processors to raise revenue for the support of government. . . . 58 (484)
>
> "The statute not only avows an aim foreign to the procurement of rev-

(h) Statements made in the Senate

Senator Wagner, the author of the bill, said:

"Viewed in isolation, there can be no doubt that all of the excise taxes embodied in the social-security bill are a valid exercise of congressional power. The only serious question is whether they may be set aside on the ground that their real intent is to stimulate social insurance laws by the several States, or that they form part of a designing Federal scheme to invade the provinces reserved for State action. But no constitutional principle is more firmly embedded in case law than that no concomitant motive will invalidate an otherwise valid exercise of the taxing power. . . . . (Cong. Rec. Vol. 79, Pt. 9, p. 9287)

"The further objection may be raised that the excise tax and the income tax levied by section 8 are in-

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enue for the support of government, but by its operation shows the exaction laid upon processors to be the necessary means for the intended control of agricultural production." 59 (485)

In its brief in the case of *United States v. Constantine*, 296 U. S. 287 (80 L. ed. 233), the Government undertook as it does here to distinguish the penalty imposed (Revenue Act of 1926, 44 Stat. 9, 95, Sec. 701) for the sale of liquors in a state where the same was forbidden, from the *Child Labor Tax Case* and *Hill v. Wallace*. It cited *United States v. Doremus* and quoted at length from the Court's opinion, including that part wherein the Court states that the fact that other motives may impel the exercise of the taxing power does not authorize the courts to inquire into that subject. (Brief of the United States, pp. 40-45). But in answer to that argument the Court said:

"Reference was made in the argument to decisions of this Court holding that where the power to tax is conceded the motive for the exaction may not be questioned. These are without relevance to the present case. The point here is that the exaction is in no proper sense a tax but a penalty imposed in addition to any the State may decree for the violation of a state law. The cases cited dealt with taxes concededly within the realm of the federal power of taxation. They are not authority where, as in the present instance, under the guise of a taxing act the purpose is to usurp the police powers of the State." [296 (239)].

valid because the measure taken as a whole indicates rather strongly that these taxes may be used to defray the costs of the special benefits to workers retiring at the age of 65. While the Supreme Court has not decided this question, the constitutionality of the Agricultural Adjustment Act, which went much further by directing that the proceeds of the taxes provided for therein should be devoted to specific purposes elaborated in the same act, was maintained by Judge Brewster of the United States District Court for Massachusetts. In the case of Franklin Process Co. against Hoosac Mills Corporation, located at page 552 of the eighth volume of the Federal Supplement, we read: (Ib.)

"The act, taken as a whole leaves no doubt of the legislative intent to levy the tax for the purposes of defraying the expenses of administering the act and paying the debts incurred for benefit payments. * * * If * * * it should appear on the face of the act that it was calculated to benefit only private interests, it would be the duty of the court, I take it, to declare the tax unlawful. It is not, however, within the province of the court to substitute its judgment for that of Congress upon the effect of a particular measure manifestly designed to promote the general welfare of the people of the United States. It is no objection that individuals will derive profit from the consummation of the legislative policy. Individuals benefit from every bounty, subsidy, or pension provided for by statute, whether Federal or State." (Ib.)[1]

Senator George raised the question that the act is not intended to raise revenue, but it is intended to furnish a support to the old age annuity and unemployment sections of the bill, in answer to which Senator Wagner said that

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1 The theory relied on by Senator Wagner was rejected when this case reached the Supreme Court. *United States v. Butler*, 297 U. S. 1 (80 L. ed. 477).

the rule that if the measure presented a proper exercise of the taxing power of Congress some other purpose which it may serve would not affect its constitutionality. (Ib. p. 9517)

Mr. Barkley said that his contention was that whenever we establish an old age pension system for everybody we will have to pay for it by general taxation. We cannot levy a tax on Ford Motor Company to pay old age pensions to its own employees and also to the Presbyterian minister and the school teacher. So whenever we decide to pension everybody who is over sixty-five years of age we must levy a general tax on everybody subject to the tax. (Ib. p. 9528)

Senator King adverted to the decision in the Railroad Retirement case and the claim that due to the fact that the act related to the power of Congress to regulate interstate commerce and not to the power of Congress to levy taxes, it was not an authority on this measure. He stated that the argument was also advanced in the Child Labor Tax Case and asked if the Senate wished to go around the circle? That in view of the Railroad Retirement decision, and the Child Labor Tax Case, how could it be said that Congress could provide pension plans for employees under the taxing clause? (Ib. p. 9536)

(3) The Act as Coercing the States

We have undertaken to set out in Appendix A a comparison of the model unemployment compensation acts provided by federal agencies for use by the states, with the forty-two state acts now in effect. A careful examination of the latter reveals that the state acts generally follow the model acts with precision, with only occasional and unsubstantial de-

partures. The laws of thirty-five states[1] provide that if TITLE IX, or in some instances if the Federal Act, is declared invalid the laws of such states shall be no longer operative. The laws of five states[2] provide that in such circumstances the funds arising in such states shall be returned to the states respectively for disposition under the laws thereof.

In its brief in the case of *Davis v. Boston and Maine Railroad,* 17 Fed. Supp. 97, the Government argued that the tax levied under TITLE IX, increases rather than decreases, the freedom of state action, pointing out that in ten states "bills proposing similar laws were defeated in the legislatures" (p. 56). These ten states were named:

~~Colorado~~, Illinois, Kansas, Maryland, Minnesota, Nebraska, New Jersey, Pennsylvania, Vermont and Virginia.

The contention, therefore, argued the Government, that the states were coerced to enact the legislation, was unsound. We would assume that the Government would now be driven from this argument since all these states except Illinois and Ne-

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[1] Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts (with certain limitations), Michigan, Minnesota, Mississippi, Montana, Nevada, New Hampshire, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia

[2] Maryland, New Jersey, North Carolina, Pennsylvania, Wyoming

braska have changed their perspective and enacted such laws (see Appendix A).

(a). Messages of the President

In his message to Congress of June 8, 1934, the President stated (p. 7) that he believed there should be a maximum of cooperation between states and the federal government, that social insurance should be national in scope, although the several states should meet at least a large portion of the cost of management, leaving to the federal government the responsibility of investing, maintaining and safeguarding the funds constituting the necessary insurance reserves. (Cong. Rec. Vol. 78, Pt. 10, p, 10771)

In his later message of January 17, 1935, the President said that he had concluded that the most practical proposal is the levy of the federal tax with the 90 percent. credit feature; the purpose being to afford a requirement of a reasonably uniform character for all states cooperating with the federal government and to promote and encourage the passage of unemployment compensation laws in the states; the 10 percent. not offset being used for federal and state administration of this "broad system". (Cong. Rec. Vol. 79, Pt. 1, p. 599)

(b). Report of the Committee on Economic Security

It was recognized that in several respects state administration might develop marked inadequacies. It was recommended that the Federal Act expressly provide that all states must include in their statutes a provision for repeal and amendment, so as to avoid any "vested interest" resulting thereunder, so that Congress could at any time increase the requirements which state laws must fulfill. (Re-

port p. 16) On account of the danger of competition from the industries of other states, few such state laws will be enacted. The obstacle to state action can be removed through the imposition of a uniform federal tax, with an offset permitted to any employer who contributes under a compulsory state law. This it is thought "will encourage the speedy enactment of state laws which meet minimum standards of security and fairness". (Ib.) The Committee further recommends that central control of reserve funds should be allowed so as to prevent their operating toward instability. A "tax-credit device" was preferred to a grant-in-aid, because under the latter system the states would not have self-supporting laws of their own. (Ib. p. 17) The credit should be permitted

> "only if the State is cooperating with the Federal Government in the administration of unemployment compensation, expending the money raised solely for benefits, and is depositing all contributions as collected in an unemployment trust fund in the United States Treasury, as hereafter recommended." (Ib. p. 18)

Additional credits would be allowed to employers having reserve or guaranteed-employment accounts "only on the condition that the employer has discharged in full his obligation under the State law and continues to pay at least 1 percent. into the pooled state fund." The employer with the individual reserve account must maintain a reserve equal to 15 percent. of his payroll, and with the guaranteed employment account, a reserve of 7½ per cent. of his payroll; and the state law must have been in operation five years. (Ib. p. 18)

The federal government should grant the states sufficient money for proper administration, "under condi-

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tions designed to insure competence and probity." Selection of personnel on a merit basis is vital to success. The grant for administration would be paid for by the 10 percent. against which no credit is allowed. (Ib.pp.18-19)

(c). Hearings before the Committee on Ways and Means of the House

Dr. Witte set forth the requirements in the bill imposed on the states as the condition of the credits. In these there is no substantial change from the law as enacted, except as to the amount of the tax-rate. Among other requirements is that all contributions imposed by the state are to be spent in the state, which removes all necessity of inserting any standards regarding benefit provisions or anything of that sort. (Ib. p. 137)

Dr. Witte referred to the fact that Governor Lehman of New York regarded as bill number 1 the measure proposed in the legislature of that state, for the enactment of which he will push "as soon as he knows what will be required". (Ib. p. 143) Ninety-eight percent. of the 10 percent. of the tax goes to the states for administration. (Ib. p. 147) In a model state bill "that we are preparing, we are putting in a clause saying that the states may depart therefrom." (Ib. p. 149) If there should be state laws that are utterly unfair, "we have a club here; we won't give them the administration fund, and they won't be able to administer the law at all unless they dig down into their own pockets to pay the administration costs. . . ." (Ib p. 154)

Miss Perkins felt that the federal-state system was the most practical at this time. (Ib. p. 183) Credits are al-

lowed up to 90 percent., only for the purpose of providing a ten per cent. fund for administration. It is proposed that this 10 percent. be given back to the states. (Ib. pp. 183-4) It had been thought wise [it is presumed, by the Committee] "to permit the States to determine under their laws who shall contribute to the fund." (Ib. p. 185)

Mr. McCormack, in questioning Miss Lenroot (Chief of the Children's Bureau, Department of Labor) drew from her the admission that unless the state submits an unemployment compensation plan that meets with the approval of "somebody in Washington," then the plan can be disapproved. (Ib. p. 286)

Mr. Hansen: The amount withheld (the 10 per cent.) will be used for the purpose of subsidizing or giving a grant-in-aid to the state employment offices and building up the standards of administration of the various states. (Ib. p. 380)

Mr. Green, discussing the grant-in-aid policy, observed that out of the moneys collected the United States "would subsidize the states", provided the latter enacted unemployment insurance measures containing the minimum standards established by Congress. (Ib. p. 388) In answer to a question, why the money should not be given direct to the beneficiary, Mr. Green said that "we have 48 sovereigns here. It cannot be done any other way. The states must enact the unemployment-insurance acts." The federal government must provide for the pool plan. It must not be left to the states, to adopt a hit-and-miss plan, like workman's compensation laws. If Congress sets up standards which should be uniform in their application, each state will respond and incorporate in its law simple standards providing, (1) a waiting period of a

week, (2) a pool-reserve fund, (3) a limit of 26 weeks. These simple standards can be set up by Congress in order to enable the states to receive a subsidy out of the federal treasury. In Great Britain all funds are pooled, but our 48 sovereignties make that "a little difficult." (Ib. p. 389) If Congress fails to establish standards the states "must conform to", it will be found that in states "where our liberal forces are not strong, where social-minded people are not so numerous, where they do not possess a social conscience, they will adopt an unemployment-insurance measure providing for the payment of the most meager sums and those "liberal forces in the state will be unable to prevent it." But if Congress says that the benefits must be fifty per cent. of earnings, not to exceed $15 a week, and if that must be put in the law in order to secure the subsidy from the federal government, the state legislature will so provide. That is the only way to get uniformity. (Ib. p. 396)

Mr. Leiserson felt that better progress would be made if "we let those states which are ready to act now begin and enact their own laws under the general authority" of the Wagner-Lewis bill. It is advisable to let each state begin administering this kind of an act and begin to collect the data on which an actuarial calculation for that state alone can be made. (Ib. p. 401)

Mr. Leiserson protested that instead of imposing a standard on the States of a 3 per cent. tax on the employer, the States ought to be allowed to split it as in Ohio: Two per cent. from the employer and 1 per cent. from the employee. He did not think it wise, because "you and I think that it is not the wise thing to do, to impose standards here in Congress that will force the States to

follow our ideas rather than their own ideas on the subject. They ought to be allowed that measure of self-government as long as all the money that is collected will go to the employees in the end. (Ib. p. 402) . . . . I would not like to see Congress at this time lay down a rule that would compel the States to act just one way and not another way." (Ib. p. 403) The federal tax should be imposed on all states so that the employer in the state that fails to pass a law "cannot chisel on the State that is going forward." (Ib. p. 408)

The purpose of the bill is, very frankly, to lead employers in a state to establish such a law, since they have to pay the tax anyway, so as to avoid this paying of the tax (except the 10 per cent.) and moving of the people to States where the system is in effect. (Ib. p. 418) This would be an inducement to every state to provide such a system of unemployment insurance.

Mr. Lewis, questioning Miss Christman (representing the National Women's Trade Union League of Washington, D. C.) who was objecting to the lack of further standards, asked if she thought the states would set a tax at less than three per cent., then proposed in the bill, when otherwise the tax would stay in the federal treasury, to which the witness replied "Well, I would like to be sure of it. . . . I think they [the more laggard states] need Federal guidance." (Ib. p. 794)

Mr. Ellenbogen felt that the tax device proposed would not in some states provide sufficient pressure to bring about the enactment of unemployment compensation systems. (Ib. p. 822)

The Report of the Technical Board on the Major Alternative Plans for the Administration of Unemploy-

ment Insurance compares the three proposed systems, (1) the national system, in which the federal government administers the entire plan, (2) the federal-state system or the subsidy plan, where the government collects all the taxes and subsidizes the states, and (3) the federal-state system or the credit plan, where the federal government retains only ten per cent. of the tax for use for administrative purposes. As to which of these plans should be adopted should be "decided primarily on practical and fundamental policy considerations, rather than on the issue of constitutionality." (Ib. p. 875) Under the third plan, if the states should pass laws and the federal act be held unconstitutional the state laws would continue to operate; while under the subsidy plan, the state administration would fail without a federal appropraton. (Ib. p. 876)

The Report of the Advisory Council to the Committee on Economic Security recommends the grant-in-aid system in a bill separate from the tax bill; the bill providing that no state is to receive aid until its law is in effect, and containing any other feasible provisions "designed to stimulate prompt state action." This plan would run less risk of unconstitutionality than the plan adopted, if the latter were "equally equipped with provisions of minimum standards for the States." (Ib. p. 883) It is recommended that wide latitude be allowed to states with regard to rate of benefits, ratio of weeks of benefit to weeks of employment, and length of waiting period; provided the states satisfy the federal administrative authority that there is reasonable prospect that they will be able to maintain payment of benefits on the basis prescribed in their law; no law to be approved which provides a waiting period of not less than two nor more than four weeks, and

prescribes a rate of benefits of not less than 50 per cent. of weekly wage not in excess of $15 per week. Actual payment of benefits should not begin until two years after the act becomes effective. The length of the probationary period of the unemployed before obtaining benefits should be left to the states. (Ib. p. 886) The federal board should have the responsibility of passing upon state laws and their administration and of certifying to the treasurer their compliance with the Federal act. (Ib. p. 887)

The Committee recommends that the Committee on Economic Security frame model state bills "incorporating the various types of legislation permitted under the federal act, and be prepared upon request, to provide actuarial and expert assistance in the drafting of bills for introduction in the several state legislatures." (Ib. p. 888)[1]

Senator Hastings remarked that "the clear purpose of the act [containing the tax-credit device] is to compel the states to adopt some plan of unemployment compensation. If the state does not adopt such plan, the tax paid by the employer goes into the general fund of the federal treasury." (Ib. p. 951)

> "I cannot see how, under our Federal Constitution, we can levy a special tax upon the people of the various states, when its sole purpose is merely to compel the states to enact, for the benefit of the people of such state, the kind of law that the Federal Congress believes to be for their benefit. (Ib. p. 951)
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> ". . . . I think the question of the necessity and the desirability of such a law should be left to the legislature and the executive of each state. (Ib.)

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1 See Appendix for comparative analysis of draft bills with the laws passed by the states.

". . . . We have never heretofore, so far as I know, attempted to compel a state to adopt any particular kind of law believed by the Federal Congress to be desirable or necessary. The adoption of this act thus takes us into an entirely new field. (Ib.)

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". . . . I insist that the State ought not to be compelled to adopt a particular kind of a tax in order to prevent the tax that the Federal Government has laid upon it being taken out of the State." (Ib. p. 961)

The one argument in favor of the measure that in the Senator's judgment was sound "economically", was that the federal tax eliminated the question of competition among the states. (Ib. p. 961) The argument does not, however, overcome the constitutional objection (Ib. pp. 961-2), which nothing can overcome. (Ib. p. 962) The senator's remedy for the problem is through governors' conferences and compacts among states. The latter would then request Congress to approve the compact. He knew of no state requesting legislation, except New York according to "last night's paper." (Ib. p. 962) The states would hasten to enact their laws if they were required to pay the 3 per cent. federal tax anyhow, which would be spent elsewhere, and the Senator objected to "our forcing them to hasten to do it." (Ib. p. 963) The employer would invite the state government to levy the state tax, since the employer has to pay the federal tax anyway. (Ib. pp. 963-4) That is the only way the state can save the tax for itself. (Ib. p. 965)

M. B. Folsom, assistant treasurer, Eastman Kodak Company, member of the Advisory Council on Economic Security, favored the plan of experimenting with several

state systems; for if a federal system were adopted we could experiment with only one plan, which would not suit the whole country with conditions so different in the various sections. (Ib. pp. 1001-2)

Mr. Emery, representing the National Association of Manufacturers, felt that the problem could be approached in another way, if the federal government would leave the states free to act and assist them financially without endeavoring "to undertake to compel them to adopt a policy which seemed good to it [the federal government] as a condition of receiving temporary assistance. . . ." (Ib. p. 1032)

(d). Report of the Ways and Means Committee of the House of Representatives

It is noted that Titles III and IX seek to encourage states to set up unemployment compensation systems and "to keep them from being handicapped if they do so." (House Report No. 615, p. 7) A uniform nation-wide tax upon industry, removing the objection of competition as between industries in different states, is necessary before states can go ahead and pass this socially desirable legislation.

> "This is one of the purposes of Title IX of this bill. In this title a tax is imposed upon employers throughout the country against which a credit is allowed of up to 90 per cent of the tax for contributions made by employers to unemployment compensation funds established pursuant to State law." (Ib. p. 8)

The standards (as to state legislation) prescribed in the bill "are designed merely to insure that employers will receive credit against the federal pay-roll tax only for pay-

ments made under genuine unemployment compensation laws." (Ib. pp. 8-9)

(e). Hearings Before the Committee on Finance of the Senate

Senator Wagner discussed the features of the subsidy grant-in-aid plan, the chief objection to which was that the states would not stand upon their own feet but would exert increasing pressure to secure contributions larger than the sums raised by the federal tax, thus mingling the insurance with relief, a most unsatisfactory method. (Hearings before Committee on Finance of the Senate, p. 4). As a substitute, however, "as a more powerful incentive", the bill presented the tax-credit feature, the natural result of which would be the enactment of laws in every state, "since the states will be anxious to draw this federal tax back into their own borders. . . ." (Ib.) The tax will put all states on a parity, "so that if a State refuses to pass a law it hasn't that advantage gained by a low standard. That is the purpose of the act". (Ib. p. 22)

Senator Black brought out from Senator Wagner that if the state desired to raise its benefits through some other method of taxation, as by correcting the "maldistribution of income", it would not be permitted to do so under the bill as framed, and secure federal aid and credit on federal taxes; that the funds intended for state administration come from the 10 per cent. retained by the federal government. (Ib. pp. 23-24)

Miss Perkins explained that the 10 per cent. of the federal tax for which no credit was allowed was for administration. There is no advantage to the state in allowing employers merely to pay the federal tax, for the

state would still have its unemployment burden to meet. The advantage to the state would come from passing such a law, for the funds contributed could be used for regular benefits to the unemployed persons within that state. (Ib. p. 112). Miss Perkins did not think that the states should be cut off from any experimentation they wanted to give to various aspects of the problem [of collecting contributions by use of a pooled fund rather than plant reserve funds]; provided the federal government assures itself that the funds received are properly taken care of and are used for the benefit of the unemployed. The Committee has several alternative model bills, which can be drawn with reference to the methods of contribution. (Ib. p. 115)

Senator Black brought out that except for administration the state had no funds to expend except from the funds raised in such state (Ib. p. 120); that the state could not substitute excess profits or any other tax for the contribution exacted of employers (and employees); that (except for the claimed precedent of the inheritance tax credit plan) there is no precedent (which Miss Perkins could at the moment think of) for this "system of federal aid, we will call it, or Federal coercion—that is what it amounts to, so far as I am concerned." (Ib. p. 122)

Senator Barkley asked for Miss Perkins' theory as to the justification for this "form of coercion or intimidation or whatever it is". He is a little bothered about the theory that Congress can say to a state "If you do not pass a law yourself we are going to take it away from you, and you do not get any of it back." (Ib. p. 126) If the money is returned, she answered, for unemployment relief, the incentive for the state to pass a suitable law is removed; the purpose of the federal law being to equalize

in the states the cost of doing business in every state so far as possible with regard to taking care of unemployed persons. She was opposed to the suggestion of Senator Barkley to earmark the funds until the states should pass proper laws, for if the states were to get the funds back anyhow the inducement or incentive to pass such laws would be removed. (Ib.)

Senator Barkley found a serious objection to the collection of a tax for a definite purpose, like unemployment insurance, and then using a considerable portion of the tax for general government expenses (Ib. pp. 126-7), as to which Miss Perkins answered that the tax was a general tax for which it is assumed the government had ample use and was always seeking new sources of revenue (Ib. p. 127). Senator Barkley replied that the tax would not be levied except to provide for unemployment insurance. Miss Perkins answered that the tax is levied to raise funds for general purposes "and to encourage the states to pass unemployment insurance laws of their own" (Ib.).

"Senator Barkley. And penalize them if they do not?

"Secretary Perkins. It only penalizes the employers, not the State generally.

"Senator Barkley. It does not penalize the Government.

"Senator Couzens (of Michigan). In other words, if this was earmarked to go back to the States at some future time, there would be no incentive for the States to hurry and create an unemployment-insurance law.

"Secretary Perkins. That is my thought, sir. (Ib.)

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"Senator Barkley. I think the fund ought not to be dissipated for general purposes; it ought to be kept intact for unemployment insurance.

"Secretary Perkins. It might be kept intact in a fund from which the Government will draw to pay, for instance, for public works, which it is anticipated will have to be thrown in to provide a work benefit after the tax benefits have been exhausted in periods of deep depression. I am told by the Treasury that things like that are merely a bookkeeping procedure. If the Government has an obligation it has to pay the obligation, and whether you have earmarked the fund or not does not matter." (Ib.)

Miss Perkins did not object to permitting the states to benefit whose legislatures did not meet before January 1, 1936, except that the plan should be so safeguarded

"that it is not an encouragement to a State to postpone its action, or to believe that it will get the money back. In that case it will not pass the law and the funds will not be accumulated as they ought to accumulate for the benefit of the unemployed."[1] (Ib. pp. 134-5)

Mr. Green expressed the thought that (as to the grant-in-aid system) the United States with the money could better bargain with the states wanting the money, which means that "the States must meet the standards set by Congress in order to get the money." (Ib. p. 159). There is a question as to whether Congress can use its taxing power "to indirectly compel a state to do something". (Ib.) But there is nothing new in the plan to impose a tax in one bill, and provide an appropriation in

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1 See also Senator Barkley's discussion with Mr. Reyburn on Ib. pp. 709-10.

another on such terms as Congress may impose. Such a plan avoids experimentation which may be "both dangerous and unconstitutional". (Ib. p. 163)

In the Report of the Advisory Council to the Committee (dated December 18, 1934) the majority recommended the two bill plan for the reason, among others, that it ran less risk of unconstitutionality as compared with the credit device bill "when the latter is equally equipped with provisions of minimum standards for the States". (Ib. p. 227). The minority felt that if the credit-device bill were declared invalid, the state laws would be complete in themselves and would remain operative. (Ib.). States should have freedom to substitute their own benefit provisions for the standard benefit recommended, provided they satisfy the federal authority that there is a reasonable prospect that they will be able to maintain payment of benefits on the basis prescribed in their laws. But in no event is a state tax to be approved unless it has a waiting period of not less than two nor more than four weeks, and prescribes a weekly benefit of not less than 50 per cent. of average weekly earnings, and a maximum benefit of at least $15 per week. (Ib. p. 230). The Committee recommended that the state law provide, in substance, what was finally adopted (Ib. pp. 226-31).

Dr. Witte said the word "subsidy" was a misnomer. It relates not to a grant by the federal government from the general revenues, but it relates "to the return of the taxes collected from a state from the 3 percent tax in this bill to the state from which collected." (Ib. p. 239). Under the tax credit plan the money the state collects is not a tax; it is a contribution or premium rate. (Ib.) Credits are withheld until the state complies, as to which Senator Connally said:

"Of course, it is designed to coerce the States into coming in".

Dr. Witte replied that

"You can use that phrase if you want to".

So Senator Connally changed the word to "induce". (Ib. pp. 239-40) On account of the objection of competition, the states have declined to act. Now the federal government imposes conditions which make it of advantage to the states to come in. (Ib. p. 241)

"Senator Connally. Whether you use the word 'induce' or 'coerce' the result is the same. The State says, 'Well, we are going to pay the 3 per cent. tax anyway, or the Government is going to take it away from us, so we will pass it ourselves.' That is the philosophy of the bill?

"Mr. Witte. The philosophy of the bill is to make it possible for the States to act." (Ib.)

Mr. Leiserson, discussing Mr. Green's preference for the grant-in-aid plan, said that some of the standards proposed under such plan would not be acceptable to all the states—Massachusetts, for instance, and he thought Massachusetts would rather lose its 3 per cent. tax than to accept the standards, although he agreed that the act of turning such tax over to the federal government is

"a power or a force which you hold over the head of the people of the State of Massachusetts and would be a very substantial money loss to them if they did not pass the law.". (Ib. p. 277)

Mr. Leiserson stated that Mr. Alexander Holtzoff, a representative of the Attorney General's office who was

on the Technical Board of the Committee on Economic Security, prepared a brief on the subject. [1] (Ib. p. 280)

Mr. Epstein favored the grant-in-aid plan, for the states would adopt the standards proposed by Congress; they had all to gain and nothing to lose. (Ib. pp. 468-9, 497-8)

Mr. Story, Vice President and General Counsel of Allis-Chalmers Manufacturing Company, Milwaukee, asked the Committee to show liberality toward Wisconsin and permit it to carry out the experiment it had begun, and not require a certain percentage as a contribution into a pool fund. (Ib. p. 521)

Mr. Folsom insisted that some freedom be left to the states, as for instance, Wisconsin which had begun its experiment without a pool fund. (Ib. pp. 563-4)

A preliminary draft of a state law was presented by Dr. Witte which contains the following advisory suggestions:

> "Each State which passes such a law promptly will be able to set up a State unemployment-compensation fund, thus using for State purposes that money which would otherwise be paid into the Federal Treasury by the State's employers. (Ib. p. 591)
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> "It is suggested, however, that each State executive or legislator who plans to make any change in either of the model bills (prepared by the Committee on Economic Security) might do well to write the Committee for advice on the vital question: 'Would

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1 Supra, p. 96, footnote 1.

the proposed change prevent the State law from qualifying for (a) Federal tax credits to employers, and (b) Federal aid for State administration?'

"By thus writing the Committee on Economic Security, each State can be advised whether the proposed changes (a) will meet Federal requirements and (b) are consistent, or conflict with other provisions of the 'model bill' itself.

"The Committee's address is 1734 New York Avenue, Washington, D. C." (Ib. p. 592) [1]

Elmer F. Andrews, State Industrial Commissioner of New York, requested the Committee to reduce to one year the time within which benefits are forbidden to be paid, so as to preserve a like provision in the New York law (Ib. p. 717). This the Committee declined to do and New York changed its bill so as to comply (Laws 1935, Chapter 468, Sec. 503.2). The New York law was in the making. At the direction of Governor Lehman Mr. Andrews appeared before the Senate Committee with amendments to bring the Federal Act more nearly in line with the New York bill. These amendments were: (1) to eliminate the provision of the act fixing the rate of contribution on the adjusted index of industrial production averages (Section 601, p. 34 of the bill as introduced) (Ib. p. 714) and to provide a rate of tax at a fixed percentage, (Ib. pp. 714-5); (2) to limit the amount of money distributed to any state for administration so that the amount based on additional need of financial assistance should not exceed ten per cent. of the total allotment to be made to that state, (Ib. p. 715); (3) to eliminate bonuses and to include tips or gratuities as part of

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[1] See Appendix for comparative analysis of model bills with the laws passed by the states.

wages (Ib. p. 717); (4) to eliminate any system except a statewide pooling system (Ib. p 717); (5) to permit benefits to be paid within one year after the enactment of the state law (Ib. p. 717); (6) to enforce a minimum standard of benefit (Ib. p. 718); (7) to apply the contribution to one who had employed four or more persons at any time in any three months period, or such shorter accounting period as the state agency may establish (Ib. p. 718); (8) to exempt farm labor (Ib. p. 719); (9) to limit to twenty-five hundred dollars the salaries on which contributions should be made (Ib. p. 719); (10) to amend the federal bankruptcy act so as to provide a priority status for contributions due from insolvent employers (Ib pp. 720-21). The Committee accepted amendments (1) and (8).

Mr. Filene of William Filene's Sons Company, Boston, stressed the necessity of state experimentation, saying that under the bill it was made impossible for the state to set up its own system unless it desires a system after the pattern of that proposed in the bill (Ib. p. 821).

According to the Report of the Unemployment Insurance Committee to Industrial Advisory Board the purpose of the bill is to encourage state action. All states will naturally pass an unemployment insurance law merely to keep the money at home, if nothing else (Ib. p. 857).

Mr. Hooker, President Hooker Electro-Chemical Co., New York City, representing the Manufacturing Chemists Association, said the bill as framed practically forces the states to adopt the pooled plan. If they comply they cannot experiment with other types of unemployment compensation (Ib. p. 882).

Prof. Paul H. Douglas, Department of Economics, University of Chicago, thought a greater degree of control could

be exercised by the federal government through the distribution for administrative purposes of the 10 per cent. of the tax which it retains, to be withheld if the states do not conform to proper standards of personnel (Ib. p. 893). A state could not substitute other methods of taxation (Ib. pp. 893-4).

Mr. Webster, representing The Connecticut Manufacturers Association, Bridgeport, Conn., felt that the people of his state had theretofore shown the ability to handle their affairs, and viewed with disquiet the attempt of the federal government to direct them along a path of action which their legislators,

> "closer to their constituencies and more familiar with our limitations, have not seen fit to launch upon as yet." (Ib. p. 898)

The industrial employers are concerned about the latent powers of federal coercion that lie in the bill. (Ib.)

Mr. Kellogg, Editor The Survey and Survey Graphic, and Vice Chairman Advisory Council, Committee on Economic Security, New York, felt that to turn back the tax to the states without setting the standards below which no state should go is to make a hollow shell of the protection for which the money is collected (Ib. p. 904).

If the 3 per cent. tax were not sufficient Mr. Kellogg would compel the states to raise the funds in some other manner (Ib. pp. 906-7).

Mr. Sargent, representing The National Association of Manufacturers: The bill apparently allows the state to have pooled or reserve funds, but in fact coerces it into creating pooled funds by providing that employers shall not receive credit for favorable employment records unless the state has

such pooled funds. He urged that each state be fully and actually allowed to determine for itself whether it desires to establish a pooled fund, an industry reserve plan, or a company reserve plan as the basis of the law (Ib. pp. 958-9).

Dr. Eveline M. Burns, Columbia University, said that it is hoped the states would hasten to set up schemes in order to get back their share of the tax paid by their employers and to obtain their share of the $49,000,000 grant for administration (Ib. pp. 1007-8).

Miss Abbott, Editor Social Service Review and Professor of Public Welfare, University of Chicago: The present form of the bill will supply the need, which is pressure at the present time on the states to enact unemployment-compensation laws, and standards can be added as they need to be added (Ib. p. 1081).

George B. Chandler, representing the Ohio Chamber of Commerce, protested against the coercion of the states as represented by the assessment on payrolls and in other ways (Ib. p. 1102).

Henry E. Jackson, President Social Engineering Institute, preferred the grant-in-aid bill, and felt that the apparent courtesy of the tax credit device was a meaningless formality to the states, because it proceeds to take almost every bit of freedom from the states (Ib. pp. 1111, 1126). He preferred a federal tax, the percentage of which is of small importance, because it is designed not to produce revenue but solely for compulsory purposes; the tax to be automatically cancelled as to the employer when its employees shall have adopted a social security plan, with appropriate yields and benefits (Ib. p. 1127).

(f). Report of the Committee on Finance of the Senate

After H. R. 7260 had been passed by the House on April 19, the Committee reported it out eliminating the requirement thate state contributions be confined to the pooled type, which will "permit states to enact whatever type of unemployment compensation law they desire." (Senate Report No. 628, p. 3). The Committee inserted two new sections (909 and 910) allowing additional credits to employers as a reward for favorable employment experience, designed "to permit states to give an incentive to employers to stabilize employment." (Ib.) The bill seeks to "stimulate" the states to set up their systems. The objective is carried out through grants-in-aid to the states (Title III) for administration, and the imposition of a uniform payroll tax on employers with the tax credit device (Title IX). (Ib. p. 12) The conditions under which state laws are approved by the federal board are "intended merely to make certain that the states actually have unemployment compensation laws, rather than mere relief measures". (Ib. p. 12). No state can gain any advantage by failing to establish a system. The interest throughout the country is such that it is to be expected that nearly all states will enact such laws "within a very short time". The states may or may not add employee contributions to those required from the employers. They may likewise determine their own rates, waiting periods, and maximum duration of benefits. (Ib. p. 13). The Committee deemed it desirable to permit the states freedom of choice as to pooled or other funds, with the recognition of credit for employers who have "regularized their employment . . . " (Ib. p. 14). The Committee analyzes Section 903 (a) setting out requirements if a state law be approved. (Ib. pp. 46-7)

(g). Statements Made in the House

Mr. Doughton, in explaining TITLE IX, stated that a few minimum requirements are imposed which the state laws must satisfy in order to qualify for the tax credit, indicating that the principal requirement was that the fund should be used solely for the payment of unemployment benefits. In general the states are left free to determine the provisions of the unemployment insurance laws (Cong. Rec. Vol. 79, Pt. 5, pp. 5475-6); that the federal bill "does not provide for unemployment insurance but merely makes it possible for the states to do so. . . . " (Ib. p. 5476)

Mr. Treadway, of the minority, said that the coercion effected by TITLES III and IX took two forms; under TITLE III the states could not secure their administrative expenses unless their laws met standards laid down in the bill; and under TITLE IX the coercion "in the guise of a tax was more direct." . . . If the state did not pass the law employers located therein nevertheless must pay the full federal tax and get no unemployment benefits; that the only way they could escape the major portion of the federal tax was "by prevailing upon their state legislature to enact such a law. . . ." In effect, TITLE IX forces employers to pay a tax either to the federal government or to the state. (Ib. p. 5529)

"Moreover", said Mr. Treadway,

> "there is a constitutional question involved, since the tax under title IX is not a true tax, but a legislative 'club' to force State action along certain lines." (Ib.)

Mr. Plumley of Vermont referred to the admission contained in the Report of the Committee on Economic Security that its recommendations are "frankly experimental"; that

the plan, according to the Committee, is one that will secure the much needed experience necessary for the development of a more nearly perfect system; yet the Committee urges haste and experimentation. (Ib. p. 5705)

Mr. Cooper of Tennessee took the position that there was no coercion; rather that TITLE IX will have the effect of enabling the states to proceed with their own laws which they have heretofore been unable to do because of the element of competition with the industries of other states (Ib. p. 5781); the bill enables the state to enact these laws which, as a practical proposition, they have heretofore been unable to do (Ib. p. 5782).

Mr. Vinson of Kentucky outlined the requirements imposed on the states before they could qualify under the bill, and these as contained in Section 303 (a) of the bill are substantially as finally enacted. Mr. Vinson stated that these measures are designed to encourage the states to act; that the uniform federal tax will remove the principal objection (Ib. pp. 5900-1).

Mr. Ellenbogen of Pennsylvania stated that as a result of the enactment of the state law the tax will be paid for the benefit of the employees in the state enacting the law; that in other states the tax will likewise be paid,

> "but the employees of such a State will derive no benefit from the tax payments, since they will go into the general funds of the Federal Government." (Ib. p. 5975)

Mr. Burdick of North Dakota characterized the act as

> "the most brazen attempt to submerge the sovereignty of State governments to the will of the General Government ever attempted in American history. Every State is compelled to pass laws such as will be approved

by the board in control of payments under this act. Had any such attempt been made in 1861 to do the same thing this Government would not be known to the world today as the United States of America. Today we see the sovereign power of States disappearing entirely and the Federal Government reaching out in all directions to control the destiny of the American people. Why have any State legislature at all, if they must pass such laws as Congress and the executive branch of the Government shall direct? When will this tendency to overshadow State governments cease?" (Ib. p. 5555)

Mr. Reed of New York, describing the effect of the tax-credit device, said that in such a case "it is not a tax but a penalty, and, therefore, discriminatory as well". (Ib. p. 5892) He stated further that the purpose of the tax was to force the states to enact such laws.

"Mr. Huddleston (of Alabama). Does the gentleman think that such a measure as this which coerces and bribes the State into a system of Federal aid is conducive to the dual form of government? You are destroying our governmental system.

"Mr. Doughton (of North Carolina.) Oh, I make the point of order, Mr. Chairman, that the gentleman from Alabama is out of order.

"Mr Sabath (of Illinois). This is encouragement to the State.

"Mr. Huddleston. What we are doing is to wipe out State lines. We are centralizing all of the powers here in Washington. We are trying to destroy our dual system of government. That is what is the matter with this measure. (Cong. Rec. Vol. 79, Pt. 6, p. 5982)

* * * *

"One member replied that not to require contributions from the States would tend to destroy our system of

government. What, I ask him, could have more influence toward the destruction of our duality of government than an offer to the legislatures of the States a bribe of a grant of Federal Funds to do a thing that they perhaps otherwise would not do? (Applause). What greater force to destroy our form of government can be offered than for the Federal Government to coerce, through a measure such as this, the States into establishing a pension system which they otherwise might not want to do?" (Ib. p. 5983)

Mr. Knutson said that the purpose of the bill was not to "induce" the states to set up systems of unemployment relief, but to "coerce" them. "There is a distinction between the two words". (Ib. p. 5541)

(h). Statements Made in the Senate

Senator Harrison referred to the factor of competition as having heretofore deterred states from establishing such a system, and for this reason it has been considered

> " a most desirable step for the Federal Government to eliminate this barrier to State legislation." (Cong. Rec. Vol. 79, Pt. 9, p. 9271)

The Senator explained that the federal tax placed all employers on the same footing and allowed and encouraged the inauguration of state systems. (Ib.)

Mr. Wagner of New York spoke of the "two powerful Federal incentives to State action" which the bill set out; these being the appropriation for administration of the state system and the credit on the federal tax which the employer under such system secured. (Ib. p. 9284). The Senator justified the tax-credit on the authority of *Florida v. Mellon,* 273 U. S. 12 (71 L. ed. 511). He entered into a discussion

of the opinion of the Supreme Court in the Railroad Retirement case recently handed down (May 6, 1935), and argued that in the present bill the power exercised was derived not from the commerce power but from the power to tax and to spend. He explained the opinion of the court as to the invalidity of the arrangement to pool the funds of the railroads by saying that in that case the benefits were to be paid for past services, but that the present bill applies to the future only. (Ib. pp. 9287-8). He took up the question of *Mountain Timber Co. v. Washington*, 243 U. S. 219 (61 L. ed. 685) and undertook to justify the present bill on the basis of the workmen's compensation decisions. (Ib. p. 9288)

The Senator ended with the peroration that the bill embraces objectives that have driven their appeals to the conscience and intelligence of the entire nation; that among other things the duty rests on Congress to

> "tear down the house of misery in which dwell the unemployed. . . ." (Ib.)

(4) The Act as an Invasion of the Reserved Powers of the States

This subject is to a large extent covered under the subjects entitled "History and Evils of the Times", supra, pages 17 et seq., "The Act as a Tax Measure", pages 71 et seq., and "The Act as Coercing the States", pages 100 et seq. The discussions which deal expressly with the invasion of reserved powers indicate the thought on the part of those who raised the subject that such an invasion was not without its constitutional problems.

(a). *Message of the President*

In the message of the President dated January 17, 1935, he touched indirectly on this question when he said that

> "in order to encourage the stabilization of private employment Federal legislation should not foreclose the States from establishing means for inducing industries to afford an even greater stabilization of employment." (Cong. Rec. Vol. 79, Pt. 1, p. 599)

Thus it was the presidential view that the states would be left room for moving forward with their own plans though the federal government proposed to pre-empt much of the space which had theretofore been occupied by the local solution of the unemployment problem.

(b). Hearings before the Committee on Ways and Means of the House

Senator Hastings, appearing before the Committee, refers to the new policy contained in the Act of placing on the federal government a large portion of the expense of taking care of those in need of public assistance, which had theretofore been borne by the states, except in unusual circumstances, especially in earthquakes and floods, where the federal government has frequently rendered temporary aid (Hearings before the Committee on Ways and Means of the House, p. 947). In answer to a question from a member of the Committee the Senator thought that it was "universally agreed" that the duty of taking care of the needy and unemployed rested primarily on the states, based

> "on the theory that the States withheld all their powers that they did not give up to the Federal Government, and kept for themselves not only the duty but the re-

sponsibility of taking care of their own people. That has been the history of this country. We never heard of a Federal almshouse. The Federal Government has never gone into any of that, except upon the theory that it was to take care of persons for our national defense. We take care of our old soldiers. That is all that we have ever done up to this time. It has always been considered and never has been disputed that these questions are primarily duties of the communities where the people live.

"Mr. Hill. That is because the States heretofore have been measurably able to take care of those situations.

"Senator Hastings. That is true." (Ib. p. 959)

Mr. Folsom in a statement filed by him said that he had heard summed up the argument against the proposed federal system, and the compelling argument against it is that

"it is almost impossible for any group to devise one plan which would be workable or desirable for the whole country with conditions so different in the various sections. . . . ." (Ib. pp. 1001-2)

Mr. Emery:

"As you examine this legislation piece by piece—and, of course, the repeated statements of its proponents makes it practically unnecessary—you perceive again and again that the whole legislation, upon its face, is pointed to one result, and that is to secure State legislation upon a subject on which the States have not legislated and which under the tenth amendment is not only under their control but which they are free to accept or reject." (Ib. pp. 1026-7)

(c). Hearings before the Committee on Finance of the Senate

Dr. Witte referred to a brief by Joseph P. Chamberlain of Columbia University on the constitutionality of the old-age pension assistance bill which is found in the Hearings before the Senate Committee on Pensions of the 71st Congress, 3rd Session, considering Senate Bill 3257, at pp. 99-101. Dr. Witte introduced the opinion (Hearings before the Committee on Finance of the Senate, pp. 92-4) in which Mr. Chamberlain referred to the class of congressional acts extending aid to the states, such as highway, maternity and infancy welfare, industrial and commercial rehabilitation; invoked that part of the opinion in *Massachusetts v. Mellon* as to a lack of power on the part of the court to adjudicate "abstract questions of political power" [262 U. S. 447, 484, 485 (67 L. ed. 1078, 1084)], the court pointing out that no state rights were invaded merely by extending the option. From this authority the author draws the conclusion that the statutes referred to and the old-age assistance bill drawn on their pattern "seem therefore to be free from possibility of attack in an action by a state or by an individual taxpayer" (Ib. p. 93). Mr. Chamberlain points out also that if the conditions in the Act involved cession of reserved powers, the Act would not be unconstitutional, because it did not become effective until accepted by the state, and that the delegation by the state to the United States of some reserved power is no violation of the federal Constitution; that the Tenth Amendment is inapplicable as a test of delegated powers of the United States and cannot be taken to limit the exercise of the delegated powers, in particular the powers of taxation and appropriation.

Interference with the power of the states is no constitutional criterion of the powers of Congress, argued Mr. Chamberlain. If the power is not given, Congress may not exercise it. If given, the laws and constitutions of the states fall before its exercise. The state's acceptance would, at most, violate only the state's constitution and would raise no question within the jurisdiction of the federal courts. No federal aid legislation had so far involved delegation of state powers precedent to receiving benefits, and the same would be true of the proposed old-age law (of 1931). [This law however is quite different from the proposed Social Security Act, which requires the delegation of powers prior to the acceptance of benefits.—Section 303(a)].

It would thus seem that an easy method for Congress to assume powers not delegated to it is to secure them from a state; for by the argument advanced the Tenth Amendment protects the state against Congress but not against itself and the act of the state in exending the power to Congress is no violation of the federal Constitution! Mr. Chamberlain's theory would throw considerable doubt on the principle that has not heretofore been challenged: That Congress can exercise only powers delegated to it by the Constitution. He would now have it exercise powers delegated to it by a single state. Thus the Constitution is amended by one state instead of thirty-six. Thus Congress is free to interfere with the powers of a state if the state accepts the offer which effects the interference, for only the state constitution would be violated (Ib. p. 93).

The author discusses the general welfare clause, discards Madison's theory and adheres to the views of Hamilton and Story: That the expenditure be general and not local (Ib. pp. 93-4). He says in summary that an act would be "free

from attack", and would be no invasion of state rights to local self-government; that the appropriation "would probably not be reviewed by the courts." Thus he reaches the same conclusion which is put forward by the attorney general (supra, p. 96): That if the tax act and the appropriation act are separated no one is left with a justiciable cause and neither act can be tested in the courts.

As far as the state is concerned, there is no doubt that it has the power and the duty to take care of its indigent people, said Senator Gore, "but it is a new theory as far as the Federal Government is concerned." (Ib. p. 133)

Labor legislation is in effect in foreign countries with unitary governments and which do not have "forty-eight sovereignties." Because the latter in this country have such different conditions it is difficult to provide a single plan; "but we should establish as great a uniformity as possible," said Mr. Green (Ib. p. 186).

In an extended discussion between Mr. Epstein and the members of the Committee he brought out that the "approach" would have to be toward "a national way without interfering with our present form of government." (Ib. p. 468) The Congress would say to the state legislature that if the latter adopts a proper law under proper standards (at least a number of weeks and a minimum amount of benefits, and a decent administration) Congress will turn over to the state all the money it has collected through the 3 per cent. tax [changed to the present rates of 1, 2 and 3 per cent., Section 901] and all the state has to do is disburse it under proper standards (Ib. pp. 468-9).

Mr. Peckham, representing the Sentinels of the Republic, referred to the work of this organization in assisting in the movement relating to the repeal of the Maternity Act,

cited its objections to the entire Social Security Act with its highly complex and experimental schemes "covering the same fields of purely local legislation" (Ib. p. 679). As accomplishments by the states he cited the abolition of child labor, adoption of workmen's compensation laws, improvement in public health and educational service, "all under state legislation and administration and at the expense of the respective communities". All these fields of state action "involve private right and domestic problems, and were wisely withheld by the founders from Federal control".

> " . . . . The proposed Federal legislation is designed to be permanent, and if enacted will work a permanent and unwholesome dislocation of our scheme of government." (Ib. p. 679)

Dr. McCormack, Commissioner, State Board of Health of Kentucky, supported the plan proposed. He had found fine cooperation from these [public health] bureaus of the government. Very rarely is there a temporary conflict with them. He annually submitted his plans and found "wise and considerate advisers in those with whom we came in contact". They would make suggestions and issued no orders except in one or two instances, where they should have done so (Ib. pp. 689-90).

Senator Capper observed that there was no reason why the states should be alarmed at anything in the bill, as to which Mr. Tyson said: "Not in the least. They have the very broadest powers" (Ib. p. 738). Here we have the remarkable picture of Congress extending the very broadest powers to the states!

Mr. Emery referred to the hearings before a Senate Committee in 1932, consisting of Senators Wagner, Glenn and Hebert. This was under Senate Resolution 483, the

Report being Senate Report 964, June 20, 1932. Senator Wagner's views are contained in Senate Report 629. The Majority Report (by Messrs Glenn and Hebert) contains the following:

> "The subject of unemployment insurance is not within the sphere of congressional action.
>
> * * * *
>
> "2. Unemployment insurance or wage reserves to be successful, should be inaugurated under compulsory State legislation and be supervised by State authority." (Ib. p. 923)

(d). Statements Made in the House of Representatives

Mr. Reed said that the tax imposed by TITLE IX was another payroll tax; that the system was a state function as distinguished from a federal function (Cong. Rec. Vol. 79, Pt. 6, p. 5892); that the members of the Committee on Ways and Means knew that they were trying to set up as a federal activity a police power reserved to the states (Ib. p. 5891).

Mr. Doughton, in charge of the bill, while not admitting that the bill invaded the reserved powers of the states, explained in words that can mean nothing else:

> "Social insurance quite justifiably places on industry itself a part of the burden of unemployment. Under suitable legislation, industry can and will be encouraged to go far toward stabilization and regularization of employment. . . . . (Ib. Pt. 5, p. 5468)
>
> * * * * *
>
> " . . . . It places part of the financial burden upon industry, and in that way provides an incentive for stabilization of employment. . . . " (Ib. p. 5476)

In prior years some industries have provided their own pension systems. This has never before been regarded as anything but local and subject to state regulation. No one suggested that such a system was valid merely because Congress had not entered the field. Yet according to Mr. Treadway, "the majority . . . . will not show any consideration for the corporations that have their own systems of pensions. . . . ." (Ib. p. 5533)

> "Mr. Robsion of Kentucky. What will become of the tremendous sum that the workers in years past have put into these various annuity funds?
>
> "Mr. Treadway. There are two features, as I understand it. The first proposition is, they could liquidate, if it was an agreement between the employer and the employee. The other proposition is that if large corporations have insured their employees through an insurance company, those policies could be canceled.
>
> "Mr. Robsion of Kentucky. But there are contracts. How do you get rid of those contracts?
>
> "Mr. Treadway. I hope I made it plain that I am not defending that proposition whatever. I am only trying to explain it a little bit." (Ib.)

(e). Statements Made in the Senate

Senator George, discussing both the old-age and unemployment features of the bill, invited attention to the rights enforceable at law which are granted private citizens,

> "irrespective of the character of their employment, irrespective of the character of the industry in which employed, in every State in the Union; and that, in my judgment, clearly shows that an effort is here made to establish a system which does not lie within the powers granted to the Congress, but which have been definitely reserved to the States under the reserved rights and

powers of the State. (Cong. Rec. Vol. 79, Pt. 9, p. 9514)

* * * * *

" . . . . If the scheme is one that can be referred to any legitimate power of the Congress, all well and good; but if it cannot be, and if it is one that must depend rightfully and rightly upon the exercise of the reserved powers of the States, then Congress should not through the compulsion of a tax undertake to compel the adoption of the scheme." (Ib. p. 9516)

Mr. King, discussing TITLE VIII, contended that Congress lacked the power to set up a system of compulsory old-age annuities. He cited *United States v. Knight*, 166 U. S. 1 (39 L. ed. 325), as holding that "the power of a state to protect the life, health, and property of its citizens is a power not surrendered to the Federal Government and is essentially exclusive to the State." (Ib. p. 9526)

Here we have Congress undertaking to protect the economic condition of the citizen and at the expense of another.

Senator Wagner pictured the benefits to industry—the incentive to the retirement of superannuated workers will improve efficiency standards, will make new places for the strong and eager and will increase the productivity of the young by removing from their shoulders the uneven burden of caring for the old; that the purchasing power resulting from the flood of benefit payments "will have an incalculable effect upon the maintenance of industrial stability" (Ib. p. 9286).

(5) The Act as a Denial of Due Process

(a). Hearings before the Committee on Ways and Means of the House

Mr. Hill suggested to Dr. Witte that the failure to tax all employers might raise a question of constitutionality, referred to the Railroad Retirement Case, and asked if it were valid to have one kind of tax for railroad employees and another kind for others; as to which Dr. Witte replied that the Retirement Act had been held invalid as not authorized under the Commerce Clause, while if it had been passed under the taxing power it would have been valid (Hearings before the Committee on Ways and Means, p. 106). Dr. Witte described the additional credits an employer may secure based on his good record

> "because he has stabilized his employment, because he has cut down his unemployment, and has built up an adequate reserve fund." (Ib. p. 138)

Merit ratings are available to employers also, allowing the credits in addition to the taxes actually paid (Ib. p. 139). But these are deferred until experiences are built over a period of five years (Ib. p. 144). While this in a sense destroys the element of uniformity it is being done for the definite purpose of encouraging employers to stabilize their employment—to reduce unemployment if they can. It gives the employer an incentive to which to look forward in reducing his unemployment to the maximum degree possible (Ib. pp. 145-6). "As in all other types of insurance we should try to measure the risk." In time the federal government may impose different rates on different industries; but our experience is not yet sufficient to guide us. The employer who gets the added

benefit is probably making a larger contribution in keeping his employees at work. This credit is available through pursuing the policy, for instance, of distributing work in slack times. This tax does depart from the rule of uniformity but the employer is meeting another cost when he stabilizes his business (Ib. p. 146).

Mr. Cooper could see an opportunity in the course of time "for considerable special favors being granted in this very system here." (Ib. p. 147)

Dr. Witte said that the provision for additional credit was clearly severable, and its elimination would not affect the constitutionality of the Act (Ib. p. 151). The credit is authorized by authority of *Florida v. Mellon*—"Whether you can allow an additional credit of the amount not paid is a difficult question, I grant you," said Dr. Witte (Ib. p. 151).

Mr. Jolly appeared for the hospitals and secured an exemption for them. He said that non-profit hospitals had payrolls just like other hospitals (Ib. p. 431).

Mr. Epstein urged that the cost of collecting from farmers, servants, small storekeepers and others would be twice as much as the amount collected (Ib. p. 559). The Act could not be administered if it included these groups (Ib. p. 571).

Mr. Morgenthau said that if domestic servants, agricultural workers and transients were included, the task of administration would prove insuperable (Ib. pp. 901-2); that of these there are seven million. The bill now embraces twenty million (Ib. p. 910).

(b). Hearings before the Committee on Finance of the Senate

Senator Wagner stressed the encouragement offered industry to enable the latter to reach the goal of stabilization (Hearings before the Committee on Finance of the Senate, p. 4).

It was Miss Perkins' opinion that under the proposed bill the states could tax one industry three percent. and another industry across the street four percent. (Ib. p. 125).

The figure of four employees [as originally provided when the bill was before the Committee and now changed to eight—Section 907 (a)] is an arbitrary number said Dr. Witte (Ib. p. 218). It is quite common in workmen's compensation acts. Administrative problems become very great when an attempt is made to eliminate all numerical limitations (Ib. p. 218).

> " . . . . The number of employers to be dealt with is enormously increased when you include all of the small employers, without increasing the number of employees anywhere near the same proportion. The Census does not distinguish between how many employers there are with four or more, but it gives figures as to the number of employers who have more than five. Eighty-five percent of all retail establishments employ five or less employees, but they have only 25 percent. of the total number of employees in the retail establishments." (Ib. pp. 218-19)

The question is one of balancing complete coverage against the administrative difficulties that develop (Ib. p. 219). There are enough serious administrative problems to cope with in the first years of the Act without trying to include all employers (Ib.) The classification of workmen's

compensation laws has been sustained by the courts of the states (Ib. p. 223).

Senator Couzens inquired of Dr. Witte:

> " . . . . If you are going to exempt one class of employers under this act how can you defend your position that this is an equal taxation?" (Ib.)

as to which Dr. Witte answered that the question is whether the classification is reasonable; that an exclusion of a group from which less money would be collected than the cost of collection would be reasonable (Ib. p. 224).

The tax is computed on the entire payroll in order to avoid examining the payroll in detail for exceptions—to secure ease of administration (Ib. p. 244).

Mr. Jolly, representing the hospitals of the country, said that all hospital employees should secure benefits but should not be taxed. These are exempted under conditions [Sec. 907 (a) (7)] (Ib. p. 258).

Mr. Leiserson said that it was desirable to use the principle of insurance for as many of the unemployed as possible; it is not possible to use such principle as to all the unemployed (Ib. p. 259). Casual labor cannot be handled on the principle of insurance, but this principle will take in a majority of wage earners who suffer from unemployment (Ib. p. 260). He saw no particular reason why the railroads should be exempted (Ib. p. 270).[1] He saw no reason why employees of federal agencies engaged in private businesses, such as barge lines and electric light plants, should not be covered by the

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1 Section 906 provides that no person shall be relieved from making payments under a state law on the ground that he is engaged in interstate commerce.

measure, if the business were of a permanent nature and not an emergency (Ib. pp. 270-1).

Senator Harrison could see some unfairness in not imposing a tax on such activities competing with private business (Ib. p. 271).

If one industry has a large amount of unemployment it ought to pay more because it is a part of its cost. The moment one considers income or paying capacity one is getting away from the principle of insurance (Ib. pp. 274-5).

Mr. Huggins appeared for various denominational bodies to ask that organizations be exempted which maintain pension systems with pension provisions at least equal to the provisions made under the Act. Senator King asked the witness if the latter did not think it highly improper for the government to discriminate against or in favor of any section or any group, such as giving a larger pension to preachers than to others; in answer to which Mr. Huggins said that he did not propose the exclusion of the group but of individual members of the group where the provision under which they fall is of wider coverage than the government plan (Ib. pp. 430-1). Such individuals would not make a contribution to the fund.

Mr. Epstein:

> " . . . Under this bill it seems that executives of $100,000 a year would still have to pay the tax. Yet no bill ever contemplates that they should get any benefit. You cannot in all fairness when you charge a pay-roll tax charge any tax on any of the pay roll except the pay roll of the insured workers. I suppose the intention was to limit it to $2,500 a year. But it is not in the bill." (Ib. p. 499)

No country taxes employees who do not get commensurate benefits (Ib. p. 501). The only important principle to consider is this: Is it right or fair for any unemployment insurance plan to establish a merit rating system some day which will relieve employers who stabilize, to get them a reduced rate?

> " . . . . Personally I do not believe any employer is entitled to any merit rating in case of unemployment insurance, because no employer is responsible either for his employment or unemployment. He is either lucky or he is not lucky. It is the social and economic forces which cause one industry to be shut down and another industry to blossom. The employer himself is not so important as to what he does; it is the social and economic forces which lie beyond him. So if a man is lucky enough to be in an industry which everybody wants, such as a public utility, let us say, it seems to me fantastic for Congress or for a State to say to them, 'Well, you are such a good boy, you are so nice, we will make it easy for you.' In other words, it is like a good insurance company saying, 'Here, you people are living happily ever after and you do not die. Let us pay you back all of your premiums. You have been nice and you have not died on us. But we will keep all the dead ones.' The insurance company would go broke of course in 2 weeks; it could not do it. The only way it can get along is by keeping the good and the bad risks. (Ib. pp. 501-2)
>
> * * * *
>
> " . . . Why should you let all your good risks escape —and you are going to deal with all of the dead ones? It is unfair, and it is against all principles of insurance." (Ib. p. 504)

Mr. Story took a different view. He asked, why should an employer who gives steady employment subsidize a competitor who does not give steady employment? (Ib. p. 518).

Unemployment is as much a hazard of industry as accident and the employer should, to a limited extent at least, bear the cost in the same way that he is bearing accident costs. (Ib. p. 518).

Mr. Folsom expressed the same view. The burden of unemployment should not be placed equally on industries with good and bad records (Ib. p. 568).

Mr. Hutzler:

> " . . . We want to give real encouragement to employers to stabilize their employment seasonally or in other ways, and those employers who would take wage-saving measures that might throw employees into this fund should be penalized by keeping the full rate while those employers who use their own establishment and manage to stabilize the employment either seasonally or by not taking drastic labor-saving measures, should have the benefit of that stabilization earlier than at the end of 5 years . . . . Those differentials can be made slowly, so that by the various State laws they do not operate too quickly and not too short an experience, but they should be made early so that as in other forms of insurance, you get the benefit of good performance, but of course as a corollary to that, provision should be put in the law giving minimum standards of benefits to the workers, so that a partially cooperating State cannot give differentials to its industries and give them a competitive disadvantage." (Ib. p. 713)

It was Senator Connally's view that every employee drawing a salary from an industry should pay. If a man drawing a salary of twenty-five thousand dollars is exempted and the man drawing fifteen dollars per week is taxed, it results in "an unjust shifting of the burden." The whole theory is that industry is going to bear its burden (Ib. pp. 719-20).

Mr. Ogburn, counsel for the American Federation of Labor, compared a street railway company with the beet canning industry. In the first the larger part of the operating cost is labor cost. The canning industry operates only a few months a year and unemployment is very large. By pooling the two the railway industry is required to contribute funds to support the canning industry (Ib. p. 772).

The legislation would never work said Mr. Elbert, unless those who continue in employment regularly contribute something to take care of the casuals. The theory is that the efficient industries which have continuous employment will contribute to some whose employment is not so favorable.

> "Senator Connally. Unless you make both the efficient industries and the efficient workers contribute to take care of the casuals, and the inefficients, who are going to be the first to lose their jobs, you are not going to accomplish anything.
>
> "Mr. Elbert. You have hit it right on the head, Senator.
>
> "Senator Connally. I am enjoying your discussion. Therefore, if you permit these big efficient corporations, like the Standard Oil and the International Harvester to segregate themselves off into watertight compartments and run their own system, you are going to destroy the whole basis of this legislation.
>
> "Mr. Elbert. I think so; yes, sir. Unemployment insurance will never work that way." (Ib. p. 834)

The administrative problem is too great to include farm hands and domestic servants (Ib. p. 841).

Mr. Kolb: The system would penalize industries maintaining relatively stable employment (Ib. p. 865).

Mr. Hooker felt that government employees should pay their share; that elimination of firms employing less than four [now eight] employees is discriminatory; that the bill selects from our total gainful population a special group and gives it unemployment benefits as a legal right while the remainder of the gainfully employed would be compelled in times of unemployment to submit to a test of need in order to obtain relief (Ib. p. 888).

Mr. Harriman, President of the United States Chamber of Commerce, felt that casuals and domestic and agricultural workers should be exempted for administrative reasons (Ib. p. 915).

Dr. Marvin, representing the American Council on Education, said that educational and charitable institutions should not be taxed, for there is practically little unemployment in this field.[1] (Ib. p. 1079)

(c). Report of the Committee on Finance of the Senate

The Committee felt it desirable to permit the states freedom of choice, in respect of the adoption of the additional credit plan, available to employers "who have regularized their employment" (Senate Report No. 628, p. 14). The number of employees covered by the tax imposed on employers (having four or more) is 25,804,000 (Ib. p. 26).

The conditions of the additional credit plan are explained (Ib. p. 50). It is noted that the employer who can qualify adds to the credit secured by the tax he actually pays the difference between such state tax actually paid and the

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1 Exemptions are available if the institution is not operated for profit [Sec. 907 (a) (7)]

maximum tax he would have had to pay if he had been contributing at the maximum state rate; the total credit not to exceed ninety percent. of the federal tax (Ib.).

(d). Statements Made in the House of Representatives

Mr. Reed said that the tax imposed by TITLE IX was not a tax but a penalty "and therefore, discriminatory as well". (Cong. Rec. Vol. 79, Pt. 6, p. 5892)

(e). Statements Made in the Senate

Senator Wagner said that "At the very hub of social security is the right to have a job". (Cong. Rec. Vol. 79, Pt. 9, p. 9283)

If this is a right on the part of the employee, the obligation to supply the job must rest on the employer. Under the provisions of our present government, which is to be protected? They could not both be equal before the law. Yet the result of the tax is to compel the employer to supply the employee with income even after the latter may have left the service years before.

The Senator pointed out the incentive to business men to diminish the volume of unemployment; that if a state law permits an employer to reduce the amount of his contribution because of his good employment record he may offset against his federal tax not only the amount of his actual payment under the state law but also the amount of the reduction which he has won; for otherwise he would not benefit in the slightest by securing such a reduction, or "additional credit". (Ib. p. 9284)

Senator George contended that Congress had selected the classes of employers which are "intimately and inescapably tied in with the employers who are taxed under Title VIII and Title IX of this bill;" that the scheme is therefore palpable and clear to his view that Congress is imposing the tax for identically the same purpose condemned by the Supreme Court in the Railroad Retirement decision—that Congress could not by compulsion make the industry set up an old-age pension system (Ib. p. 9515).

In answer to Senator George's argument that Congress is imposing a tax on one class of its citizens for the benefit of another, Senator Wagner undertook to justify the tax "because the employer gets a special benefit from the pension law . . . . because it is now a recognized fact that more security to the worker improves his efficiency . . . ." (Ib. p. 9526)

(6) The Act as Raising Funds to be paid into Private Hands

(a). Hearings before the Committee on Ways and Means of the House

Mr. Dingell inquired as to the advantage resulting from the operation of the Act under a governmental agency as compared with existing private agencies, in answer to which Mr. Hansen replied that with respect to unemployment insurance there were no private agencies in the field; that very close governmental supervision would be required over private agencies, the combined cost of which with the administrative cost of private agencies would be greater than if it

were handled directly through a governmental agency.[1] (Hearings before the Committee on Ways and Means, p. 382). Mr. Lewis interrupted to say:

> "There is a grave constitutional question as to whether even the Government of the United States could impose a tax which should be payable into private hands." (Ib. p. 383)

(b). Hearings before the Committee on Finance of the Senate

Senator Gore observed that the plan takes the purchasing power [resulting from the expenditure of the old-age pension] from the manufacturer and the merchant, which they have earned, and transfers it to the aged pensioner, which he has not earned, in order that the latter may use it to buy from the manufacturer and the merchant, whose purchasing power was taken away to start with. Miss Perkins replied that she did not think it the function of the government to take purchasing power away from one individual to give it to another; that the incidental advantage which the whole community would get, as well as the aged pensioner, was that there would arise a new location of purchasing power which would be useful to all of the community who have contributed to the fund into which the taxes going to support the plan are paid (Hearings before the Committee on Finance of the Senate, pp. 130-1).

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1 The payment by a state agency of the contributions imposed by state law into the hands of the unemployed individual under the compulsion of the Federal Act, merely follows a route through the Unemployment Trust Fund leading direct to the private individual. If the contributions were paid to a private agency for disbursement, the latter would only be substituted for the Unemployment Trust Fund provided by Section 904.

Senator Gore contended that the transfer of purchasing power may help the individual who gets the purchasing power, but it hurts the one who parts with it. He cited the effect of the processing tax resulting in taking millions of dollars out of one set of pockets and putting it into another set of pockets; that the distincion is fundamental (Ib. p. 131). He referred to Senator Long's plan to take the wealth from those who have it and give it to those who lack it, and inquired, "Now, how does that differ, in principle, from this plan?" (Ib. p. 132). Miss Perkins replied at length that the difference in degree frequently relates to principle itself; that of course if the government took all the wealth, or even a substantial part of it, away from the sources where it is created, the possibility of creating any more wealth at that place is dried up. Merely to divert a portion to a source which needs it "does not seem to be in any way a distribution of the wealth of the ordinary income-producing agency". (Ib.)

"Senator Gore. Your answer, as I understand it, is that under your plan you would not take too much of a person's income, and Senator Long would take too much of a person's income. Now what is the standard? Who is to decide how much is too much and how much is not too much?

"Secretary Perkins. The Congress of the United States. (Ib.)

* * * * *

"Senator Gore. I know the theory of private property used to be—I do not say it is now—that the man who earned the dollar honestly has a better right to it than anybody else.

"Secretary Perkins. I would not dispute that.

"Senator Gore. What I am trying to get at now is whether this legislation is not out of line with that

once established principle. . . . . Now who is to decide? Is it the people who want this wealth given to those who haven't got it? Has a citizen no guarantee, under our constitutional system, that that thing cannot be done? Do you think he has? Isn't this plan, and the Long plan, in effect to take private property for private use?

"Senator Couzens. Isn't that a question for the Supreme Court to decide?

"Secretary Perkins. It is not for me to decide. Thank you, Senator." (Ib. p. 133)

(c). Statements Made in the House of Representatives

Mr. Knutson replied that Congress could impose taxes only to provide revenue for the government; that the tax (under TITLE VIII) on its face is not for the purpose of providing revenue for federal purposes, but it is simply an enforced contribution for the benefit of a certain class of persons (Cong. Rec. Vol. 79, Pt. 5, p. 5543).

Mr. Scott of California observed that the only way Congress seemed to be able to accomplish the purpose of the bill was to try to take from those who have and give to those who have not (Ib. p. 5477).

(d). Statements Made in the Senate

Senator Harrison said that almost every state commission investigating the subject urged some form of unemployment insurance uniformly recognizing that part or all the cost should be borne by employers in industry and that reserves should be built up in good times to help in providing for the welfare of those unfortunates cut off from regular work by seasonal unemployment or that resulting from the

many other causes found even in normal times (Cong. Rec. Vol. 79, Pt. 9, p. 9270); that it had been found actuarially possible, and the bill provides a method, for those in industry to contribute from year to year a tax covered into the Treasury of the United States sufficient to bear the costs of an old-age annuity for those in industry (Ib. p. 9268).

Senator George spoke in support of an amendment (Ib. p. 9510) offered by Senator Clark which undertook to preserve pension plans set up by private idustry, providing for approval by the Board of applications from employers who prefer to operate private annuity plans in lieu of the plan set up by the bill.

Senator George said there was grave doubt of the constitutionality of the bill as it stands; that he did not believe that any lawyer of experience would assert that the bill is free from constitutional question.

> " . . . . I do not wish to expand the constitutional argument, because the Senate is not in receptive mood, but the bill undertakes to impose a tax upon specific employers. The beneficiaries of the tax are a special class, it is disclosed in the hearings, and it is disclosed in the suggestion of the Secretary of the Treasury at one time for an alteration in the tax rate itself, showing that the only purpose of the bill is to set up a system of old-age annuity and unemployment insurance by the use of the taxing power, and by the creation of the annuity system and the old-age employment insurance system. (Ib. p. 9514)
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> * * * * *
>
> " . . . . I contend further that when the scheme which has been devised is so tied in with the taxing provision as to disclose but one purpose, and that is the purpose of using the general taxing power for the purpose

of providing this system only for the beneficiaries who fall within the classification of the employees of the taxed employers, we shall have a legislative act, if the bill shall be passed, which any reasonable lawyer of experience will be bound to say is subject to serious question." (Ib. pp. 9515-16)

(7) The Act as an Unreasonable and Arbitrary Enactment in Imposing an Unequal Tax

(a). Hearings before the Committee on Ways and Means of the House

Mr. Cooper was interested to ascertain how the principle of additional credits contributed toward uniformity as to which Dr. Witte admitted that it was to a slight extent a deviation from that principle. Under the plant-reserve system it will not be very great because the number of plants that will build up a fifteen per cent. reserve is likely to be very small. It is a crude system that levies the same rate of contribution on the bank as on the contractor. The risk is of a different sort. Mr. Cooper replied that if a large industry had different branches in different states and one state allowed preferential treatment which was denied in the other, the principle of uniformity which is sought to be accomplished by the imposition of a federal tax is shaken (Hearings before the Committee on Ways and Means, p. 146).

Mr. Hutzler referred to the differential in workmen's compensation laws. If the experience of an industry was good, it got a lower rate. Mr. Treadway asked, then if employees of stores having less hazardous employment than the employees of a mill, if there are less accidents in the former, or if the health of its employees is such that they can continue working longer without a vacation, is that a differential? In

answer to which Mr. Hutzler said "we are thinking just in the unemployment end rather than in the health end" (Ib. p. 775). This subject is further covered under the subject of Denial of Due Process of Law (supra, p. 138).

(b). Hearings before the Committee on Finance of the Senate

For this subject see The Act as a Denial of Due Process of Law, supra, p. 138.

(c). Statements Made in the Senate

Senator George called attention to the fact that the tax on employers to support the system is levied at a uniform rate without regard to the hazards of industry.

> " . . . . The mining company which sends its men down to the bowels of the earth, where fatalities often occur, has to bear the same burden of tax as the industry in which retirement, accidents, and death rarely and seldom occur. That is another feature involving the constitutionality of the measure, but I do not intend to do more than say that no responsible lawyer who has been in a courthouse three times would dare say that the provisions of this bill which have been discussed are not subject to serious question." (Cong. Rec. Vol. 79, Pt. 9, p. 9518)

Senator King observed that (under TITLE VIII) when standing alone, there is a discrimination in its classification apparently in violation of the Fifth amendment. He inquired:

> " . . . . Why should stenographers, clerks, janitors, and so forth, doing the same class of work, be exempted from a tax when they are working for religious, chari-

table, scientific, or educational institutions and subject to the tax when working for other institutions or business?" (Ib. p. 9536)

Senator Tydings observed that if it is the general policy of the nation to take people off the work list when they reach sixty-five there is no reason why the federal government or the Presbyterian Church or anybody else should have an exemption, unless every other concern which is already providing its own retirement agency should have an equal right, particularly when it is maintaining a better system or pays more than is proposed to be paid by the federal government (Ib. p. 9528).

Senator Barkley said that Congress could not tax the Baldwin Locomotive Works in order to pension somebody who does not work for that company; so that whenever it is decided to pension everybody who is over sixty-five years of age a general tax must be levied on everybody who is subject to the tax (Ib. p. 9528).

Referring to the decision in the Railroad Retirement Case, and to the argument that that case threatened the bill with extinction under the due process clause, since it held that the pooled funds arrangement violated the Fifth Amendment, Senator Wagner declared that the Supreme Court was "tremendously influenced" by the specific provisions of the pooling system under fire, particularly in its application to past periods of service (Ib. pp. 9287-8).

(8) Retention by Congress of the Power to Alter or Repeal the Act

(a). Hearings before the Committee on Ways and Means of the House

It is not left to inference that Congress demands the right to amend or repeal the Social Security Act without incurring any liability for state funds or otherwise. The state law is required to provide for legislative amendment or repeal before it can be certified by the Board [Sec. 903 (a) (6)]. Mr. Witte:

> " . . . We wish to make it doubly certain that if the Congress desires to insert further conditions at a later date, it may do so, if that should become necessary." (Hearings before the Committee on Ways and Means, p. 138)

III

The Principle of Reasonable Relationship

What reasonable relationship to the taxing power of Congress can this measure be said to sustain? It is not intended that one dollar of the payroll taxes shall be used for general purposes of government. In *Magnano v. Hamilton,* 292 U. S. 40 (78 L. ed. 1109), the Supreme Court said that the requirement that a tax be for a public purpose "has regard to the use which is to be made of the revenue derived from the tax, ... " [43 (1113)]. The entire tax resulting from the Child Labor Tax Act, which is part of the revenue act of 1919 (40 Stat. 1057, 1138), finds its way to the treasury to be disbursed for the purposes of government; yet from the opinion of the Supreme Court we may well infer

the view that the provisions of the Act were not naturally and reasonably adapted to the collection of the tax, but "solely to the achievement of some other purpose plainly within state power." [259 U. S. 20, 43 (66 L. ed. 817, 822)]. Likewise in the Future Trading Act (42 Stat. 187) the tax went into the treasury. In *Hill v. Wallace,* 259 U. S. 44 (66 L. ed. 822), the court said that the manifest purpose of the Act was to compel boards of trade to comply with regulations

> "many of which can have no relevancy to the collection of the tax at all . . . . The Act is in essence and on its face a complete regulation of boards of trade, with a penalty of 20 cents a bushel on all 'futures' to coerce boards of trade and their members into compliance. When this purpose is declared in the title to the bill, and is so clear from the effect of the provisions of the bill itself, it leaves no ground upon which the provisions we have been considering can be sustained as a valid exercise of the taxing power. . . . " [66-7 (829)]

In *Linder v. United States,* 268 U. S. 5 (69 L. ed. 819), the court was considering the Harrison Narcotic Act (38 Stat. 785) as amended by Section 1006 of the general revenue act of 1919 (40 Stat. 1057, 1130). There was no suggestion in the Act as to the use of the funds arising from the tax. The original Act provided by Section 7 that all internal revenue tax laws should be extended and made applicable to the special taxes imposed by the Act, so far as applicable to and not inconsistent with the provisions of the Act. Under the claimed authority of the amendment contained in the revenue act of 1919, the government indicted Dr. Linder on the charge of giving a known addict four tablets containing morphine with the expectation that she would administer them to herself in divided doses, for the sole purpose of relieving conditions incident to addiction and keeping herself comfortable. The Court declared such a claimed construction of the act was

beyond the power of Congress to authorize; that the law was essentially a revenue measure "and its provisions must be reasonably applied with the primary view of enforcing the special tax. . . ." [22 (825)]

Other cases which have reached the Supreme Court in which that Court considered reasonable relationship of the act to the constitutional power under which the act is claimed to arise are *Truman H. Newberry et al. v. United States of America*, 256 U. S. 232, 258 (65 L. ed. 913, 921-2), in which the Court declared invalid the act of Congress regulating primary elections for United States senators (37 Stat. 25) as not being reasonably related to the exercise by Congress of its powers derived under Article 1, Section 4 of the Constitution; *Damselle Howard, etc. v. Illinois Central Railroad Company, etc.*, 207 U. S. 463, 502-3 (52 L. ed. 297, 310-11), involving the first employers' liability act which the Court held extended to matters within the local control of the states; *Joseph Keller, etc. v. United States*, 213 U. S. 138, 144 (53 L. ed. 737, 739), involving the prosecution against a citizen who within a period of three years after the arrival of an alien harbored the latter in the pursuit of her degraded life; and the *Child Labor Case*, 247 U. S. 251, 275-6 (62 L. ed. 1101,1107), forbidding the shipment in interstate commerce of goods made in a mill employing child labor. In all these cases the Court declared the end sought by Congress not reasonably related to the constitutional power on which the respective acts under consideration were claimed to rest.

If the acts of Congress involved in all the foregoing cases are beyond the power of Congress, it is difficult to believe that the Court will now so extend the power of Congress under the taxing clause as to permit it to compel the states through the direct penalties contained in the Federal

Act, to engage in a system of unemployment, which Congress acknowledges through the proposed tax device it is unable to put into effect directly.

IV

Inseparability of the Federal Act

The Federal Act contains Section 1103 to the effect that if a provision is held invalid the remainder of the Act shall not be affected thereby. This declaration provides a rule which may aid in determining the legislative intent, "but is not an inexorable command." *Railroad Retirement Board v. Alton*, 295 U. S. 330, 362 (79 L. ed. 1468, 1482). But this Court cannot rewrite the statute and give it an effect altogether different from that sought by the measure viewed as a whole [Ib. 362 (1483)]. To the same effect see *Carter v. Carter Coal Company*, 298 U. S. 238, 312 (80 L. ed. 1160, 1189).[1]

The question to be determined by this Court is, therefore, would Congress have been satisfied to enact what remains of the statute after eliminating the invalid parts?

From the history of the Act it is obvious that Congress was not seeking taxes for the Treasury; it was providing a plan for unemployment. Without the plan the tax would not have been imposed. With the plan the entire Act falls.

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[1] Constant use of the separability clause may defeat its purpose. See Dissection of Statutes by Noel T. Dowling, American Bar Association Journal, Vol. 18, page 298.

V.

Grants Contained in Prior Acts of Congress Furnish no Precedent for TITLE III of the Federal Act.

Referring again to the brief of the Government in the case of *Davis v. Boston & Maine Railroad*, we note that dependence is placed on the history of prior grants by the United States in varied fields of federal and state action (p. 53), and support is thus claimed for the validity of the Federal Act. In the brief of the Attorney General (Cong. Rec. Vol. 79, Pt. 5, p. 5784), reference is made to several classes of grants. In the Committee hearings mention is made of the Morrill Act (12 Stat. 503) which is pressed as a precedent for the grants contained in the Federal Act. There is slight similarity between the two. The Morrill Act grants to each state thirty thousand acres of land (or scrip in lieu thereof) for each senator and representative in Congress on the following conditions:

(a) The sales' price of the lands shall be devoted entirely to the purposes of the grant, the state paying all administration and other costs of sales.

(b) All monies derived from sale of the lands shall be invested in bonds of the United States, or other states, or other safe stocks, yielding not less than five percentum on the sales' value.

(c) The monies so invested shall constitute a perpetual fund for the endowment, support and maintenance of at least one college where the leading object shall be to teach branches of learning related to agriculture and the mechanical arts, including military tactics; in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions in life.

(d) The annual interest shall be regularly applied without diminution, to the foregoing purposes, except that ten percentum of the capital may be expended for the purchase of lands for sites or experimental farms.

(e) No portion of the principal or interest shall be applied to the purchase, erection or repair of buildings.

(f) Any state accepting this grant shall provide within five years at least one college, or the grant shall cease and the state shall reimburse the United States the amount theretofore received by the state from the sale of such lands.

(g) Each state shall make an annual report regarding the progress of each college, one copy of which shall be sent to the secretary of the interior and one copy to each such other college.

(h) No state in rebellion or insurrection shall be entitled to the grant.

(i) No state shall be entitled to the grant unless it accept the same within two years after the approval of the act.

(j) The governments of the several states accepting the grant of scrip shall report annually to Congress all sales made of such scrip, the amount received for the same, and what appropriation has been made of the proceeds.

No conditions imposed under any grants heretofore made have approximated the proportion of TITLE III and TITLE IX. It is true that many grants have stipulated conditions, both prior and subsequent to acceptance; but it is likewise true that under *Frothingham v. Mellon,* 262 U. S. 447 (67 L. ed. 1078) any such grant could have been attacked with great difficulty, if at all.

The conditions and requirements contained in the many grants heretofore made may be grouped in the following subjects. These concern:

(1) Lighthouses, Beacons, etc.
(2) Land Grants for Canals, Navigation, Improvement of Water Courses
(3) Land Grants for Schools and Universities
(4) Land Grants for Railroads
(5) Land Grants for Public Road
(6) Land Grants; Miscellaneous
(7) Grant of Use of Vessel
(8) Funds, Grants of
    (a) Diseases among Cattle
    (b) Experiment Stations and Extension Work by Agricultural Colleges
    (c) Vocational Education
    (d) Vocational Rehabilitation
    (e) Public Roads
    (f) Disabled Soldiers
    (g) Forest Fire Protection
    (h) To Reimburse for Losses from Floods
    (i) Maternity and Infancy Welfare
    (j) Flood Control
    (k) Federal Emergency Relief
    (l) Study of Agriculture

We undertake to set out without duplication the conditions attached to prior grants:

(1) *Lighthouses, Beacons, etc.*

The states to cede within one year lands on which are located lighthouses to be maintained by the United States (1 Stat. 53).

(2) *Land Grants for Canals, Navigation, Improvement of Water Courses*

(a) Proceeds of land grant to be used for the construction of canals (5 Stat. 57).

(b) Tolls to be collected not to be in excess of amount necessary for repairs and maintenance and to be expended exclusively on canals. (Ib.)

(c) Annual report to be made of rate and amount of tolls. (Ib.)

(d) Dimensions of canal fixed (10 Stat. 35).

(e) Canal to be a public highway. (Ib.)

(f) Canal to be begun within three years and completed within ten years, or state shall be liable for the lands sold. (Ib.)

(g) Canal to be free of toll to the United States. (Ib.)

(h) Accounts of all expenditures of construction and operation to be kept. (Ib.)

(i) Land sold to be limited to one section per township (15 Stat. 169).

(j) No selection to be made from mineral lands. (Ib.)

(k) Lock and dam to be free from toll, to be constructed under the direction of the United States Department of Engineers, and to be completed within two years; otherwise the land reverts. (Ib.)

(3) *Land Grants for Schools and Universities*

(a) To be sold only with the consent of the inhabitants of the district for which the land was reserved (4 Stat. 237).

(b) Each district to be entitled only to that amount accruing from the sale of land belonging to the district. (Ib.)

(c) Legislature to accept grant within one year (2 Stat. 424).

(d) State to release right to certain tract which had theretofore been granted [to Ohio]. (Ib.)

(e) To be sold at public auction for use and support of university (21 Stat. 326).

(f) Funds derived to be invested in United States bonds and deposited in the Treasury of the United States. (Ib.)

(g) Sale of land for any one year limited to one-tenth of the land granted. (Ib.)

(h) No money to be spent for buildings or salaries until fund reaches $50,000 when interest may be spent; excess of $100,000 may be spent. (Ib.)

(i) State to collect no rent for land granted for college purposes (44 Stat. 1296).

(4) *Land Grants for Railroads*

(a) Land selected to be within twenty miles of road (12 Stat. 772).

(b) Land to be used exclusively for the construction of railroad. (Ib.)

(c) Railroad to be free from toll to United States. (Ib.)

(d) Land to be sold when and as construction proceeds. (Ib.)

(e) If road not completed within ten years land reverts to the United States. (Ib.)

(f) Road to be of certain width and grade (12 Stat. 797).

(5) *Land Grants for Public Road*

(a) Road to be completed within four years (3 Stat. 727).

(b) Land not to be sold for less than $1.25 per acre. (Ib.)

(c) Road to be free for use by the United States (4 Stat. 242).

(6) *Land Grants; Miscellaneous*

(a) Forest lands ceded to Wisconsin for forestry purposes only; if not so used lands revert (37 Stat. 324).

(b) Lands for fish hatchery to be used by the state under plans to be approved by Secretary of War (39 Stat. 35).

(c) For game refuge—to be used solely as authorized; otherwise lands revert (42 Stat. 828).

(d) For park purposes—to be used solely as authorized; otherwise lands revert (44 Stat. 591).

(e) Lands of the United States may be included in state irrigation district, map of district to be submitted and sufficiency of water supply demonstrated; costs of irrigation to be borne by private lands (39 Stat. 506).

(7) *Grant of Use of Vessel*

Use of vessel permitted to a state for use of a school which is maintained for instruction in navigation, etc.; the

vessel to be returned when the school is discontinued (18 Stat. 121).

(8) *Funds, Grants of*

(*a*) *Diseases Among Cattle*

When the plans of the commissioner of agriculture for suppression of diseases among cattle shall be accepted by any state, the commissioner may spend money therein for this purpose (23 Stat. 31).

(*b*) *Experiment Stations and Extension Work by Agricultural Colleges*

1. Only one-fifth of annual appropriation to be spent on buildings (24 Stat. 440).

2. Reports to be made to state government and commissioner of agriculture. (Ib.)

3. State to appropriate a sum equal to that expended by the United States (38 Stat. 372).

4. Reports to be made to the Secretary of Agriculture. (Ib.)

5. Plans for the work to be carried on under the act to be submitted and approved by the Secretary of Agriculture. (Ib.)

(*c*) *Vocational Education*

Plans to be approved by Federal Board (39 Stat. 929).

(*d*) *Vocational Rehabilitation*

No monies to be used for purchase, erection or repair of any building or equipment (41 Stat. 735).

(*e*) *Public Roads*

To be kept in repair by the state (39 Stat. 355).

(*f*) *Disabled Soldiers*

$100 per annum per person appropriated to states which have established homes (25 Stat. 450).

(*g*) *Forest Fire Protection*

1. State to pass a forest fire protection law (36 Stat. 961).

2. State to appropriate equal amount of money for a like purpose. (Ib.)

3. Title to revert to the state when the United States is reimbursed for purchase of lands (1935 Pamphlet, ... Stat. 963).

4. State to provide for state forester. (Ib.)

5. State to pay future costs of administering and managing lands. (Ib.)

6. State to pay United States one-half of gross proceeds covered by agreement, to be credited on purchase price to state. (Ib.)

(*h*) *To Reimburse for Losses from Floods.*

1. To provide bridges swept away by floods (46 Stat. 84).

2. To be used only on highways in the federal-aid highway system. (Ib.)

3. State to show that either before or after the approval of the act it has expended a like sum for the same purpose. (Ib.)

(*i*) *Maternity and Infancy Welfare*

1. Money is not to be used for payment of maternity or infancy pensions (42 Stat. 224).

2. State to create agency to cooperate with the federal agency. (Ib.)

(*j*) *Flood Control*

1. States to maintain flood works after completion (45 Stat. 534).

2. To accept lands turned over to the States. (Ib.)

3. To provide without cost to the United States rights of way for levee foundations. (Ib.)

4. To contribute one-third of cost of work. (Ib.)

(*k*) *Federal Emergency Relief*

1. State to certify necessity for funds (47 Stat. 709).

2. Monies used on public highways to be repaid by state within ten years. (Ib.)

(*l*) *Study of Agriculture*

To provide for research into basic laws of agriculture; the state to provide an amount equal to that of the United States (1935 Pamphlet, ... Stat. 436).

Let us compare all the foregoing conditions with the equirements of Sections 302 (a) and 303 (a) and (b), and ith Sections 903, 904 and 907, an analysis of which is set out t length on pages 9-13 herein. The result is obvious. ast history provides no precedent for the conditions im- osed by the Federal Act.

CONCLUSION

1. TITLES III and IX are not a valid exercise of he taxing powers of Congress.

2. The taxing powers sought to be exercised are ot separable from the provisions relating to credits and nemployment and to the requirements imposed on the tates.

3. The appropriation of $49,000,000 is not intended o correspond with the total tax imposed by TITLE IX. is intended to result from and equal the amount of the x after the credit is given, the cost of administration of ate laws being estimated at ten per cent. of the total state and federal) tax collected.

4. While Congress may have lately spent billions dollars for relief, which is the primary burden and duty the states, the constitutionality of which is difficult if ot impossible to raise in the courts, the fact that Con- ress has spent this sum cannot now be used to arm Con- ress with the power to impose invalid burdens on the ates in order to compel the latter to refill the federal easury and to encourage the states to assume their oper burdens in the future.

The Constitution marks the boundaries between the United States and the states. Congress lacks the power to discipline the latter.

5. It is undeniable that the states were compelled to comply with the demands of Congress. The entire history of the Federal Act shows this plan and intention. That forty-two states have submitted is convincing of its effectiveness.

6. No grant by Congress is justified if its non-acceptance results in a penalty. If the states do not comply their citizens are compelled to supply millions of dollars to be used for the administration of agencies in the states that submit.

7. The system denies due process of law to employers of eight or more by requiring the states to impose on this group a tax for the purpose of paying benefits to individuals who are unemployed.

Respectfully submitted,

BORDEN BURR

WALTER BOULDIN

WM. LOGAN MARTIN,
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Birmingham, Alabama,
April 3, 1937.

I hereby certify that I have this day forwarded to Hon. Stanley Reed, Solicitor General, copy of the foregoing brief and of Appendix A thereto.

WM. LOGAN MARTIN,
Of Counsel for Petitioners.

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APR 6 1937

CHARLES ELMORE CRO

IN THE

Supreme Court of the United States

OCTOBER TERM, 1936

No. 837

CHAS. C. STEWARD MACHINE COMPANY,
Petitioner,

v.

HARWELL G. DAVIS, Individually and as Collector of Internal Revenue,
Respondent.

APPENDIX A TO BRIEF FOR PETITIONER

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WALTER BOULDIN,
WM. LOGAN MARTIN,

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PURPOSE OF APPENDIX

This Appendix is for the purpose of indicating the system of coercion and compulsion imposed on the states by the Government of the United States to bring about the enactment of unemployment compensation laws by the former, so as to put into effect the system of unemployment compensation provided in the Federal Act and the state acts, which Congress alone is powerless to make effective.

We invite the Court's scrutiny of the similarity of the provisions of the laws of the states to the "draft bills" proposed by the governmental agencies, and which have been adopted by the states pursuant to the plan and policy of Congress.

The Appendix covers laws of states enacted prior to April 1, 1937.

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COMPARISON OF DRAFT BILLS PREPARED BY FEDERAL
WITH UNEMPLOYMENT COMPENSATION LAWS OF ST
APRIL 1, 1937

PART I

			CONTRIBUTIONS				
	TYPE OF FUND	COVERAGE	EMPLOYER	EMPLOYEE	STATE	MERIT RATING	EXEMPTIONS
A Draft Bill for State Unemployment Compensation prepared by Committee on Economic Security (Senate Hearings Feb. 9, 1935, p. 593)	Pooled fund with merit rating	Employer of 4 or more within each of 13 weeks Sec. 3 (6) p. 594	3% Optional provision allowing reduction in 1936 & 1937 Sec. 5 (2) p. 597	Optional provision for 1% Sec. 5 (5) p. 598	None	Optional provision: After 1940, Com'n. determines merit rating on employer's 3-year contribution and benefit experience Minimum —% Resulting average, 3% Sec. 5 (4) pp. 597-598	(a) Employment relief project (b) Employment ed or appointed officer (c) Employment unit on an annual basis (d) Employment teacher in a public school, college, or university Sec. 3 (7) pp. 594
B Draft Bill for State Unemployment Compensation prepared by Social Security Board January, 1936	Same	Employer of 8 or more within each of 20 weeks Sec. 19 (f) p. 45	0.9%—1936 1.8%—1937 2.7%—1938-40 Merit rating thereafter Sec. 7 (b) & (c) pp. 18-19	Optional provision for ½% Sec. 7 (d) p. 22	Same	After 1940, Com'n. determines merit rating under requirements: 1.8% if excess is 7½-10% of average annual payroll, 0.9% if over 10%, 3.6% & 2.7% if benefits exceed contributions. Not less that 2.7% unless assets in the fund exceed benefits. Not less than 1.8% unless assets are twice the benefits for preceding year. Sec. 7 (c) pp. 19-20. Alternative provision allows wider discretion. p. 21.	(1) Service in the incidental to serv formed in anothe contributions are (2) Service in em this state or any instrumentalities (3) Service in e other states or U Government or t strumentalities (4) Service with to which unemp compensation is under an unemp compensation sy liahed by an act (5) Agricultural (6) Domestic s (7) Service on (8) Service for daughter or spo minor for parent (9) Service for organization Sec. 19 (g) pp.
C Draft Bill for State Unemployment Compensation prepared by Social Security Board September, 1936	Same	Same as B	Same as B	Same as A	Same	Same as B	Same as B, exce contain (1)

ON OF DRAFT BILLS PREPARED BY FEDERAL AGENCIES
UNEMPLOYMENT COMPENSATION LAWS OF STATES
APRIL 1, 1937

PART I.

			BENEFITS				
			TOTAL UNEMPLOYMENT				
	MERIT RATING	EXEMPTIONS	RATE	MAXIMUM	MINIMUM	PARTIAL UNEMPLOYMENT	QUALIFICATION PERIOD
	Optional provision: After 1940, Com'n. determines merit rating on employer's 3-year contribution and benefit experience Minimum —% Resulting average, 3% Sec. 5 (4) pp. 597-598	(a) Employment on a Gov't. relief project (b) Employment as an elected or appointed public officer (c) Employment by a Gov't. unit on an annual salary basis (d) Employment as a teacher in a public school, college, or university Sec. 3 (7) pp. 594-595	50% of wages Sec. 6 (2) p. 598	$15 per week Sec. 6 (2) p. 598	$—per week Sec. 6 (2) p. 598	Wages plus benefits equal to $1 more than total unemployment benefits Sec. 6 (3) p. 598	40 weeks employment in 104 weeks or 26 in 52 weeks Sec. 7 (1) p. 600
	After 1940, Com'n. determines merit rating under requirements: 1.8% if excess is 7½-10% of average annual payroll, 0.9% if over 10%, 3.6% & 2.7% if benefits exceed contributions. Not less that 2.7% unless assets in the fund exceed benefits. Not less than 1.8% unless assets are twice the benefits for preceding year. Sec. 7 (c) pp. 19-20. Alternative provision allows wider discretion. p. 21.	(1) Service in the state incidental to service performed in another in which contributions are required (2) Service in employ of this state or any of its instrumentalities (3) Service in employ of other states or U. S. Government or their instrumentalities (4) Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of Congress (5) Agricultural labor (6) Domestic service (7) Service on vessel (8) Service for son, daughter or spouse, or minor for parents (9) Service for charitable organization Sec. 19 (g) pp. 47-49	Same Sec. 3 (b) p. 2	Same Sec. 3 (b) p. 2	$5 per week or ¾ of full weekly wage, whichever is lesser Sec. 3 (b) p. 2	Difference between weekly benefit amount and 5/6 of wages Sec. 3 (c) p. 3	13 weeks employment in 52 weeks Sec. 4 (e) p 8
	Same as B	Same as B, except does not contain (1)	Same	Same	Same as B	Same as B	Same as B

	TYPE OF FUND	COVERAGE	CONTRIBUTIONS: EMPLOYER	CONTRIBUTIONS: EMPLOYEE	CONTRIBUTIONS: STATE	MERIT RATING	EXEMPTIONS
ALABAMA Unemployment Compensation Law Chapter 447 Laws 1935 (Page No. refers to pamphlet form of act)	Same	Same as B Sec. 2 (f) p. 2	Same as B Sec. 4 (b&c) pp. 6-7	Same as A Sec. 4 (d) p. 7	Same	Same as A, except minimum of 1½% and maximum of 4% Sec. 4 (c) p. 7	Contains sections covering those in (2), (3), (5), (6), (7), (8), an (9). Also contain service for carri in interstate com merce and subje to Ry. Labor Ac agents of Ins. Co Sec. 2 (g) p. 3
ARIZONA Chapter Senate Bill 3 1st Special Session 1935	Pooled fund with separate employer accounts for merit rating only	Employer of 3 or more within each of 20 weeks	Same as B	None	Same	Same as B	Same as B
ARKANSAS Act No. 155 House Bill 331 Laws 1937	Pooled fund with separate employer accounts for merit rating only	Employer of 1 or more within each of 20 weeks	1.8%—1937 2.7%—1938-42 merit rating thereafter	None	Same	After 1942, if, during preceding 3 years excess in employer's account is 7½-10% of annual payroll, rate 2%; if excess is 10% or more, rate 1%; if contributions less than benefits, rate 4%	Same as B
CALIFORNIA Chapter 352 Laws 1935	Pooled fund with separate employer accounts for merit rating only	Same as B	Same as B	0.45%—1936 0.90%—1937 1% thereafter; not to exceed 50% of general employer rate	Same	After 1940, if, during preceding 3 or 5 year reserve; 8-10%, contribution rate 2½%; 10-12%, rate 2%; 12-15%, rate 1½%; 15% or more, rate 1%. Also guaranteed employment accounts	Same as C
COLORADO House Bill 1, Third Special Session 1935	Pooled fund with separate employer accounts for merit rating only	Same as B	10.8% for Dec., 1936 1.8%—1937 2.7%—1938-1941 Merit rating thereafter	None	Same	After 1941, if, during preceding 3 years excess in employer's account is 7½-10% of annual payroll, rate 1.8%; if excess is 10% or more, rate 0.9%; if contributions less than benefits, rate 3.6% or 2.7%	Same as C, exc does not contai (7)

MPARISON OF DRAFT BILLS WITH STATE LAWS (*Continued*)

TE	MERIT RATING	EXEMPTIONS	BENEFITS — TOTAL UNEMPLOYMENT RATE	BENEFITS — TOTAL UNEMPLOYMENT MAXIMUM	BENEFITS — TOTAL UNEMPLOYMENT MINIMUM	BENEFITS — PARTIAL UNEMPLOYMENT	BENEFITS — QUALIFICATION PERIOD
ne	Same as A, except minimum of 1½% and maximum of 4% Sec. 4 (c) p. 7	Contains sections covering those in A and (2), (3), (5), (6), (7), (8), and (9). Also contains: service for carrier in interstate commerce and subject to Ry. Labor Act; agents of Ins. Co. Sec. 2 (g) p. 3	Same Sec. 5 (b) pp. 7-8	Same Sec. 5 (b) pp. 7-8	None	Wages plus benefits equal to $2 more than total unemployment benefits Sec. 5 (c) p. 8	Same as A Sec. 6 (a) p. 9
e	Same as B	Same as B	Same	Same	Same as B	Wages plus benefits equal to $2 more than total unemployment benefits	Same as B
e	After 1942, if, during preceding 3 years excess in employer's account is 7½-10% of annual payroll, rate 2%; if excess is 10% or more, rate 1%; if contributions less than benefits, rate 4%	Same as B	Same	Same	None	Wages plus benefits equal to $2 more than total unemployment benefits	Earned 16 times his weekly benefit in 1st 3 out of last 4 quarters
e	After 1940, if, during preceding 3 or 5 year reserve; 8-10%, contribution rate 2½%; 10-12%, rate 2%; 12-15%, rate 1½%; 15% or more, rate 1%. Also guaranteed employment accounts	Same as C	Same	Same	$7 per week	Wages plus benefits equal total unemployment benefits	State resident for year, or employed 26 weeks in State during that year
e	After 1941, if, during preceding 3 years excess in employer's account is 7½-10% of annual payroll, rate 1.8%; if excess is 10% or more, rate 0.9%; if contributions less than benefits, rate 3.6% or 2.7%	Same as C, except does not contain (7)	Same	Same	If wages $10 week or less, 70% of wages. Not to exceed $5	Same as B	13 weeks employment in 52 weeks, or 20 weeks in 104

			CONTRIBUTIONS				
	TYPE OF FUND	COVERAGE	EMPLOYER	EMPLOYEE	STATE	MERIT RATING	EXEMPTIONS
CONNECTICUT Chapter Senate bill 5 1st Special Session 1935	Employer reserve accounts	Employer of 5 or more within each of 20 weeks	Same as B	None	Same	After 1940, if reserve ratio is 7½-10%, rate is 2.5%; 10-12½%, rate [illegible]; 12½-15%, rate 1.5%; 15-17½%, rate 1%; 17½% or more, no contribution	Same as B
DISTRICT OF COLUMBIA Pub. No. 319, 74th Congress	Same	Employer or 1 or more	1%—1936 2%—1937 3%—1938-1940 Merit rating thereafter	None	1936, $100,000; 1937, $125,000; 1938, $175,000	After 1940, Board determines rate by employer's unemployment hazard after 3 years benefit experience; minimum 1½%, maximum 4%. Resulting average, 3%	Contains Secs. covering (6), (8) (9). Also conta casual labor not the course of t employer's busi service in emplo U. S. Governme instrumentality U. S.; service i ploy of Senator resentative, Del or Resident Co service in emplo trict as school teacher, police o or individuals s for retirement
IDAHO Chapter 12 Laws 1936	Pooled fund with separate accounts for merit rating only	Employer of 1 or more within each of 20 weeks (In 1936 tax applies only to employers of 8 or more)	Same as B, except merit rating begins after first 8 months in 1941	Beginning in 1937, ½ of employer's tax on first $3,000 of employee's wage	Same	After September 1, 1941, rate is 2.7% unless 36 months benefit experience; 1.8% if excess in employer's account is 10-12½% of average annual payroll; 0.9% if excess is 12½-15%; cease if over 15%	Same as C
INDIANA Chapter 4 Laws 1936	Employer Reserve Account	Same as B	For employment beginning April 1, 1936, rate 1.2%; 1.8% 1937; 2.7% 1938 & first quarter of 1939; thereafter rate based on reserve ratio	One-half of amount his employer pays. Maximum 1% No contribution for first calendar year	Same	Including the last ¾ of 1939 and beginning in 1940: 2.7% if reserve account is not normal; 2% if normal and balance is 10.3-13.7% of payroll for preceding year; 1% if 13.7-17.1%; cease if over 17.1%	Same as B

PARISON OF DRAFT BILLS WITH STATE LAWS *(Continued)*

E	MERIT RATING	EXEMPTIONS	BENEFITS				
			TOTAL UNEMPLOYMENT			PARTIAL UNEMPLOYMENT	QUALIFICATION PERIOD
			RATE	MAXIMUM	MINIMUM		
e	After 1940, if reserve ratio is 7½-10%, rate is 2.5%; 10-12½%, rate 2%; 12½-15%, rate 1.5%; 15-17½%, rate 1%; 17½% or more, no contribution	Same as B	4% of total wages of one of last four quarters	Same	$7.50 per week	Wages plus benefits equal to $2 more than total unemployment benefits	Earned 24 times his weekly benefit rate in last 52 weeks
000; 000; 000	After 1940, Board determines rate by employer's unemployment hazard after 3 years benefit experience; minimum 1½%, maximum 4%. Resulting average, 3%	Contains Secs. covering (6), (8), & (9). Also contains: casual labor not in the course of the employer's business; service in employ of U. S. Government or instrumentality of U. S.; service in employ of Senator, Representative, Delegate, or Resident Commissioner; service in employ of District as school officer or teacher, police or fire dep't. or individuals subject to act for retirement of employees.	40% of wages plus 10% for dependent spouse plus 5% for each dependent relative; 65% maximum	Same	None	Wages plus benefits equal $2 more than total unemployment benefits	Same as B
e	After September 1, 1941, rate is 2.7% unless 36 months benefit experience; 1.8% if excess in employer's account is 10-12½% of average annual payroll; 0.9% if excess is 12½-15%; cease if over 15%	Same as C	Same	Same	Same as B	Wages plus benefits equal $2 more than total unemployment benefits	Same as A
e	Including the last ¾ of 1939 and beginning in 1940: 2.7% if reserve account is not normal; 2% if normal and balance is 10.3-13.7% of payroll for preceding year; 1% if 13.7-17.1%; cease if over 17.1%	Same as B	Same	Same	Same as B	Wages plus benefits equal total unemployment benefits	20 weeks employment in 52 weeks

COMPARISON OF DRAFT BILLS WITH STATE LAWS (Cont

			CONTRIBUTIONS				
	TYPE OF FUND	COVERAGE	EMPLOYER	EMPLOYEE	STATE	MERIT RATING	EXEMPTIONS
IOWA Senate Bill 1 1st Special Session 1936	Pooled fund with separate employer accounts for merit rating only	Employer of 8 or more within each of 15 weeks	1.8%—July 1, 1936 to end of year not to exceed 0.9% of annual payroll; 1.8%—1937 2.7%—1938-41 merit rating thereafter	None	Same	Same as B except if benefits exceed contributions, rate 3.6%	Same as B
KANSAS Chapter House Bill 542 Laws 1937	Pooled fund with separate employer accounts for merit rating only	Same as B	1.8%—1937 2.7%—1938-41 merit rating thereafter	None	Same	Same as B	Same as B
KENTUCKY Act No. Senate Substitute for House Bill 1 Special Session 1936	Pooled fund and employer reserve accounts for merit rating and payment of benefits	Same as B	Same as B except merit rating can begin in 1939	Same as A	Same	2.7% until 1 yr. elapsed during which employees could receive benefits. Thereafter, if balance in reserve account is 5 times largest annual benefits: 2% if balance is 10.3-13.7% of annual payroll; 1% if 13.7-17.1%; contributions cease if over 17.1%; if reserve account exhausted, rate 3.7%	Same as B but also exempts service in employ of insurance co. by agents or solicitors
LOUISIANA Act No. 97 Laws 1936	Pooled fund with separate employer accounts for merit rating only	Same as B	Same as B	Beginning in 1937, rate is ½ of 1%	Same	2.7% until 3 years of benefit experience. Beginning January 1, 1942, if total contribution exceeds total benefit rate is: 1.8% if excess is 7½-10% of annual average payroll; 0.9% if excess is 10% or over; if contributions less than benefits, rate 3.6% or 2.7%	Same as B

PARISON OF DRAFT BILLS WITH STATE LAWS (*Continued*)

	MERIT RATING	EXEMPTIONS	BENEFITS: TOTAL UNEMPLOYMENT RATE	BENEFITS: TOTAL UNEMPLOYMENT MAXIMUM	BENEFITS: TOTAL UNEMPLOYMENT MINIMUM	BENEFITS: PARTIAL UNEMPLOYMENT	QUALIFICATION PERIOD
	Same as B except if benefits exceed contributions, rate 3.6%	Same as B	Same	Same	$5 per week or full weekly wage, whichever is lesser	Wages plus benefits equal to $2 more than total unemployment benefits	Earned 15 times his weekly benefit rate in 4 out of last 5 quarters
	Same as B	Same as B	4% of total wages of one of last 4 quarters	Same	$5 per week or 6% of total wages earned in such quarter, whichever is lesser	Same as B	Earned 16 times his weekly benefit rate in 1st 3 out of last 4 quarters
	2.7% until 1 yr. elapsed during which employees could receive benefits. Thereafter, if balance in reserve account is 5 times largest annual benefits: 2% if balance is 10.3-13.7% of annual payroll; 1% if 13.7-17.1%; contributions cease if over 17.1%; if reserve account exhausted, rate 3.7%	Same as B but also exempts service in employ of insurance co. by agents or solicitors	Same	Same	Same as B	Committee to study and report not later than Dec. 1, 1937	20 weeks employment in 52 weeks
	2.7% until 3 years of benefit experience. Beginning January 1, 1942, if total contribution exceeds total benefit rate is: 1.8% if excess is 7½-10% of annual average payroll; 0.9% if excess is 10% or over; if contributions less than benefits, rate 3.6% or 2.7%	Same as B	Same	Same	Same as B	Same as B	Same as B

			CONTRIBUTIONS				
	TYPE OF FUND	COVERAGE	EMPLOYER	EMPLOYEE	STATE	MERIT RATING	EXEMPTIONS
MAINE House Bill 1883 1st Special Session 1935	Pooled fund with separate employer accounts	Same as B	Same as B except no merit rating	None	Same	None	Same as B
MARYLAND Chapter 1 House Bill 1 2nd Special Session 1935	Pooled fund	Same as B	0.9%—1936 1.8%—1937 2.7%—1938 and thereafter	None	Same	None	Same as B
MASSACHUSETTS Chapter 479 Laws 1935	Same	Same as B	Less Federal amount not credited, rate is 1%—1936; 2%—1937; 3% 1938-40; merit rating thereafter	1%—1937; thereafter 50% of amount contributed by employer	Same	After 1940, Commission determines merit rating on employer's 3 year contribution and benefit experience; minimum, 1%	Same as C, except does not contain (4)
MICHIGAN Chapter House Bill 1 1st Special Session 1936	Pooled fund with separate employer accounts for merit rating only	Employer of 1 or more within each of 3 months whose aggregate remuneration was $50 in each such month	2.0%—1937 3.0%—1938-41 merit rating thereafter	None	Same	3% until 3 yrs. elapsed during which employees could receive benefits. Thereafter, if contributions exceed benefits; if reserve ratio is 8-10%, rate is 2.5%; 10-12%, rate 2%; 12-15%, rate 1.5%; more than 15%, rate 1%	Same as C but also exempts service in a purely professional capacity not in the nature of permanent employment.
MINNESOTA Chapter 2 House Bill 11 2nd Special Session 1936	Pooled fund with separate employer accounts for merit rating only	Same as B	Same as B	None	Same	2.7% until 3 yrs. elapsed during which employees could receive benefits. Thereafter, if contributions exceed benefits; 1.8%, if excess is 7½-10% of annual average payroll; 1.3% if excess is 10-12½; 0.9%, if excess is 12½% or more or excess equals 3 times total benefits for preceding year; assets must be twice benefits for rate under 1.8%; if assets less than benefits, rate 2.7%	Same as C

ARISON OF DRAFT BILLS WITH STATE LAWS (*Continued*)

MERIT RATING	EXEMPTIONS	BENEFITS — TOTAL UNEMPLOYMENT — RATE	BENEFITS — TOTAL UNEMPLOYMENT — MAXIMUM	BENEFITS — TOTAL UNEMPLOYMENT — MINIMUM	BENEFITS — PARTIAL UNEMPLOYMENT	QUALIFICATION PERIOD
None	Same as B	Same	Same	Same as B	Same as B	Earned 16 times his weekly benefit rate in 1st 4 out of last 5 quarters
None	Same as B	Same	Same	Same as B	Same as B	Earned 16 times his weekly benefit rate in 4 out of last 5 quarters
After 1940, Commission determines merit rating on employer's 3 year contribution and benefit experience; minimum, 1%	Same as C, except does not contain (4)	Same	Same	$5 per week	None	90 days employment in 52 weeks or 130 days in 104 weeks
3% until 3 yrs. elapsed during which employees could receive benefits. Thereafter, if contributions exceed benefits; if reserve ratio is 8-10%, rate is 2.5%; 10-12%, rate 2%; 12-15%, rate 1.5%; more than 15%, rate 1%	Same as C but also exempts service in a purely professional capacity not in the nature of permanent employment	4% of total wages of one of last four quarters	$16	$7 or 6% of earnings in quarter upon which benefit is determined, whichever is lesser	Monthly benefit equal to wages plus 5 times benefit rate less any remuneration in excess of $12 from employment not subject to Act	Earned wages equal to $50 in each of any 3 out of 5 preceding quarters, or an aggregate of $250 in any 3 of such 5 quarters
2.7% until 3 yrs. elapsed during which employees could receive benefits. Thereafter, if contributions exceed benefits; 1.8%, if excess is 7½-10% of annual average payroll; 1.3% if excess is 10-12½; 0.9%, if excess is 12½% or more or excess equals 3 times total benefits for preceding year; assets must be twice benefits for rate under 1.8%; if assets less than benefits, rate 2.7%	Same as C	Same	Same	$6 per week or ¼ of weekly wage, whichever is lesser	Same as B	Earned 16 times his weekly benefit rate in 4 out of last 5 quarters and has had 10 weeks employment in last half of base period

			CONTRIBUTIONS				
	TYPE OF FUND	COVERAGE	EMPLOYER	EMPLOYEE	STATE	MERIT RATING	EXEMPTIONS
MISSISSIPPI Chapter 176 Laws 1936 Amended Chapter 3 Laws 1936	Pooled fund with separate employer accounts for merit rating only	Same as B	1.2% for employment beginning April 1, 1936; 1.8% 1937; 2.7% thereafter. Future rates may be reduced	None	Same	Report of committee as to advisability	Same as C
MONTANA Chapter House Bill 344 Laws 1937	Same	Employer of 1 or more within each of 20 weeks	1.8%—1937 2.7%—1938-41 merit rating thereafter	None	Same	Same as A except based on preceding 12 months and minimum is 1%, maximum is 3.6%, resulting average is 2.7%	Same as B
NEVADA Assembly Bill 93 Laws 1937	Same	Employer of 1 or more within each of 20 weeks	1.8%—1937 2.7%—1938-41 merit rating thereafter	None	Same	Same as A except based on preceding 12 months and minimum is 1%, resulting average is 2.7%	Same as B
NEW HAMPSHIRE Chapter 99, 142 Laws 1935	Pooled fund with separate employer accounts for merit rating only	Same as A	1%—1936; 2%—1937; 3%—1938-40; merit rating thereafter	0.5%—1936; 1% thereafter; not to exceed 50% of general employer rate	Same	After 1940 Commission determines merit rating on employer's 3 or 5 year contribution and benefit experience; reserve 8-10% contribution rate 2½%; 10-12%, rate 2%; 12-15%, rate 1½%; 15 % or more, rate 1%	Contains section covering those i A and (2), (3), (4), (5), (6), (9)
NEW JERSEY Chapter 270 1st Special Session 1936	Pooled fund with separate employer accounts for merit rating only	Same as B	10.8% Dec. 1936 not to exceed 0.9% of annual payroll 1.8%—1937 2.7%—1938-41 merit rating thereafter	Same as A	Same	Same as B except if benefits exceed contributions, rate 3.6%	Same as B, except does not contain (4)
NEW MEXICO Act No House Bill 1 1st Special Session 1936	Pooled fund with separate employer accounts for merit rating only	Same as B	10.8%—Dec. 1936 not to exceed 0.9% of annual payroll 1.8%—1937 2.7%—1938-41 merit rating thereafter	None	Same	Same as B except if benefits exceed contributions, rate 3.6%	Same as B

PARISON OF DRAFT BILLS WITH STATE LAWS (*Continued*)

MERIT RATING	EXEMPTIONS	BENEFITS				
		TOTAL UNEMPLOYMENT			PARTIAL UNEMPLOYMENT	QUALIFICATION PERIOD
		RATE	MAXIMUM	MINIMUM		
Report of committee as to advisability	Same as C	Same	Same	None	Same as B	Same as B
Same as A except based on preceding 12 months and minimum is 1%, maximum is 3.6%, resulting average is 2.7%	Same as B	Same	Same	$7 per week or ¼ of full time weekly wage, whichever is lesser	None	Earned 16 times his weekly benefit rate in 1st 3 out of last 4 quarters
Same as A except based on preceding 12 months and minimum is 1%, resulting average is 2.7%	Same as B	Same	Same	$7 per week or ¼ of full time weekly wage, whichever is lesser	Wages plus benefits equal $2 more than total unemployment benefits	Earned 16 times his weekly benefit rate in 1st 3 out of last 4 quarters
After 1940 Commission determines merit rating on employer's 3 or 5 year contribution and benefit experience; reserve 8-10% contribution rate 2½%; 10-12%, rate 2%; 12-15%, rate 1½%; 15 % or more, rate 1%	Contains sections covering those in A and (2), (3), (4), (5), (6), and (9)	Same	Same	If wages $10 or less, 70% of wages. Not to exceed $5	Wages plus benefits equal $2 more than total unemployment benefits	60 days employment in 52 weeks
Same as B except if benefits exceed contributions, rate 3.6%	Same as B except does not contain (4)	Same	Same	Same as B	None	Earned 16 times his weekly benefit rate in base period
Same as B except if benefits exceed contributions, rate 3.6%	Same as B	Same	Same	Same as B	Wages plus benefits equal to $2 more than total unemployment benefits	Earned 16 times his weekly benefit rate in 4 out of last 5 quarters

	TYPE OF FUND	COVERAGE	CONTRIBUTIONS			MERIT RATING	EXEMPTION
			EMPLOYER	EMPLOYEE	STATE		
NEW YORK Chapter 468 Laws 1935	Pooled fund	Same as A	1%—1936; 2%—1937; 3% thereafter	None	Same	Advisory Council to study advisability of establishing merit rate system. Report by March 1, 1939. No rate to be less than 1% of payroll	Contains se covering (5) (9). Also co tains emplo by employe his spouse minor child.
NORTH CAROLINA Chapter House Bill 1 1st Special Session 1936	Pooled fund with separate employer accounts for merit rating only	Same as B	0.9%—1936 1.8%—1937 2.7%—1938 and thereafter	None	Same	Commission to make study and report as to advisability of merit rating. Report to be made 30 days after convening of legis. in 1939	Same as B
NORTH DAKOTA Chapter Senate Bill 62 Laws 1937	Pooled fund with separate employer accounts for merit rating only	Same as B	1.8%—1937 2.7%—1938-41 merit rating thereafter	None	Same	After 1941, if, during preceding 3 years excess in employer's account is 7½-10% of annual payroll, rate 2%; if excess is 10% or more, rate 1%; if contributions less than benefits, rate 2.7%	Same as B
OHIO Chapter House Bill 608 1st Special Session 1935	Pooled fund with separate employer accounts for merit rating only	Beginning in 1937, employer of 3 or more	Same as B	None	Same	2.7% until 3 yrs. elapse during which employees could receive benefits. Thereafter, if contributions exceed benefits: if excess is less than 8% of average annual payroll, rate is 4.5%; 8-10%, rate 2.5%; 10-12%, rate 1.75%; 12% or more, rate 1%	Same as B except does (4), (8) a Also contai service in ploy of sch service as casual labo service as short time er by stud who is mi service on mission be service of more than day a wee
OKLAHOMA Chapter House Bill 1 1st Special Session 1935	Pooled fund with separate employer accounts for merit rating only	Same as B	10.8%—Dec. 1936 not to exceed 0.9% of annual payroll 1.8%—1937 2.7%—1938-40 merit rating thereafter.	None	Same	Same as B except if benefits exceed contributions, rate 3.6%	Same as except do not contai (4)

PARISON OF DRAFT BILLS WITH STATE LAWS (*Continued*)

	MERIT RATING	EXEMPTIONS	BENEFITS				
			TOTAL UNEMPLOYMENT			PARTIAL UNEMPLOYMENT	QUALIFICATION PERIOD
			RATE	MAXIMUM	MINIMUM		
	Advisory Council to study advisability of establishing merit rate system. Report by March 1, 1939. No rate to be less than 1% of payroll	Contains sections covering (5) and (9). Also contains employment by employer of his spouse or minor child.	Same	Same	$5 per week	None	90 days employment in 12 months or 130 days in 24 months
	Commission to make study and report as to advisability of merit rating. Report to be made 30 days after convening of legis. in 1939	Same as B	Same	Same	Same as B	Same as B	Earned 16 times his weekly benefit rate in 4 out of last 5 quarters
	After 1941, if, during preceding 3 years excess in employer's account is 7½-10% of annual payroll, rate 2%; if excess is 10% or more, rate 1%; if contributions less than benefits, rate 2.7%	Same as B	Same	Same	Same as B	Same as B	Earned 16 times his weekly benefit rate in 1st 3 out of last 4 quarters
	2.7% until 3 yrs. elapse during which employees could receive benefits. Thereafter, if contributions exceed benefits: if excess is less than 8% of average annual payroll, rate is 4.5%; 8-10%, rate 2.5%; 10-12%, rate 1.75%; 12% or more, rate 1%	Same as B except does not contain (4), (8) and (9). Also contains: service in employ of school, service as a casual laborer, service as a short time worker by student who is minor, service on commission basis, service of not more than one day a week.	Same	Same	None	Where loss of weekly wages is 40-55%, benefit is 10% of weekly wage; 55-70%, benefit 20%; 70-85%, benefit 30%; 85% or more, benefit 40%	None
	Same as B except if benefits exceed contributions, rate 3.6%	Same as B except does not contain (4)	Same	Same	$8 per week or ¾ of full weekly wage, whichever is lesser	Same as B	Earned 16 times his weekly benefit rate during base year

COMPARISON OF DRAFT BILLS WITH STATE LAWS (Co

	TYPE OF FUND	COVERAGE	CONTRIBUTIONS: EMPLOYER	CONTRIBUTIONS: EMPLOYEE	CONTRIBUTIONS: STATE	MERIT RATING	EXEMPTIONS
OREGON House Bill 71, Special Session 1935	Pooled fund with separate employer reserve accounts for merit rating only	Employer of 4 or more within each of 20 weeks	0.9%—1936; 1.8%—1937; 2.7% thereafter	Included by error in enrolled law but declared void	Same	Commission to investigate relation of contribution rates to unemployment risks. Report to Legislature by March 1, 1941. Also guaranteed employment accounts	Same as C, exc does not conta (4). Also cont casual labor no the course of e er's business
PENNSYLVANIA Act No. 1 House Bill 1 2nd Special Session 1935	Pooled fund	Employer of 1 or more within each of 20 weeks	0.9%—1936 1.8%—1937 2.7%—1938 and thereafter	None	Same	None	Same as B except does not contain (4)
RHODE ISLAND Chapter 2333 Laws 1936	Pooled fund with separate employer accounts for merit rating only	Employer of 4 or more within each of 20 weeks	0.9%—1936 1.8%—1937 2.7%1938 and thereafter	Employee contributions, same on first $3,000 of his annual wages 1%—1937 1.5%—1938 and thereafter	Same	Board to study the operation of act for period of 5 years and report feasibility of merit rating system. Report to general assembly by February 15, 1941	Same as C, exc does not conta (4) and (8). A contains: servi in employ of s and service by child for paren
SOUTH CAROLINA Act No. 768 Laws 1936	Pooled fund with separate employer accounts for merit rating only	Same as B	For employment from July 1 to end of 1936, rate 1.8%; 1.8%—1937; 2.7%—1938-1940 and first six months of 1941. Merit rating thereafter	None	Same	After July 1, 1941, if assets in fund exceeds benefits paid in last 12 months, and if employer's account is 7½-10% of annual average payroll, rate is 1.8%; if assets are twice benefits and account is 10% or more, rate is 0.9%. If contributions are less than benefits, rate is 3.6% or 2.7%	Same as B, bu contains: servi employ of ins company by ag representatives
SOUTH DAKOTA Chapter Senate Bill 1 Special Session Approved 1936	Pooled fund	Same as B	90% of Federal excise tax on employer prior to 1937 1.8%—1937 2.7%—1938 and thereafter	None	Same	None	Same as B

ARISON OF DRAFT BILLS WITH STATE LAWS (*Continued*)

MERIT RATING	EXEMPTIONS	BENEFITS — TOTAL UNEMPLOYMENT — RATE	BENEFITS — TOTAL UNEMPLOYMENT — MAXIMUM	BENEFITS — TOTAL UNEMPLOYMENT — MINIMUM	BENEFITS — PARTIAL UNEMPLOYMENT	QUALIFICATION PERIOD
Commission to investigate relation of contribution rates to unemployment risks. Report to Legislature by March 1, 1941. Also guaranteed employment accounts	Same as C, except does not contain (4). Also contains: casual labor not in the course of employer's business	Same	Same	$7 per week	Wages plus benefits equal total unemployment benefits; but no partial benefit of less than $2 paid	Same as A
None	Same as B except does not contain (4)	Same	Same	$7.50 per week	None but study to be made as to advisability	Earned 13 times his weekly benefit rate during base year
Board to study the operation of act for period of 5 years and report feasibility of merit rating system. Report to general assembly by February 15, 1941	Same as C, except does not contain (4) and (8). Also contains: service in employ of spouse and service by minor child for parents	Same	Same	$7.50 per week	Same as A	Same as A
After July 1, 1941, if assets in fund exceeds benefits paid in last 12 months, and if employer's account is 7½-10% of annual average payroll, rate is 1.8%; if assets are twice benefits and account is 10% or more, rate is 0.9%. If contributions are less than benefits, rate is 3.6% or 2.7%	Same as B, but also contains: service in employ of insurance company by agents or representatives	Same	Same	Same as B	Wages plus benefits equal $2 more than weekly benefit amount or exceed his weekly benefit amount by the sum received for such partial employment	Same as B
None	Same as B	Same	Same	Same as B	Same as B	Earned 16 times his weekly benefit rate in 4 out of last 5 quarters

COMPARISON OF DRAFT BILLS WITH STATE LAWS (Cont

	TYPE OF FUND	COVERAGE	CONTRIBUTIONS: EMPLOYER	CONTRIBUTIONS: EMPLOYEE	CONTRIBUTIONS: STATE	MERIT RATING	EXEMPTIONS
TENNESSEE House Bill 1 2nd Special Session 1936	Pooled fund with separate employer accounts for merit rating only	Same as B	Same as B	None	Same	Same as B except if benefits exceed contributions, rate 3.6%	Same as B but also contains: service in employ insurance co. by agents or representatives.
TEXAS S. B. 5 Third Special Session 1936	Pooled fund with separate employer accounts for merit rating only	Same as B	Same as B	None	Same	After 1940, if employer's account is 7½-10% of average annual payroll, rate is 1.8%; if account is 10% or more, rate is 0.9%. If contributions are less than benefits rate is 3.6% or 2.7%	Same as B, but exempts insuranc agents who work commission basis
UTAH Chapter 38 Laws 1935	Employer Reserve Account	Employer of 4 or more	3% during an employer's first two years of contributions; based on reserve ratio thereafter	None	Same	After an employer is subject to act for 2 years, when reserve per employee is less than $75, rate is 3%; $75-$100, rate is 1%; $100 or more, no contribution	Same as B.
VERMONT Act No. House Bill 1 2nd Special Session Approved 1936	Pooled fund with separate employer account for merit rating only and employer reserve accounts. Employer elects.	Same as B	Same as B	None	Same	Pooled fund: after 1940 com'n. determines merit rating on employer's 3 year contribution and benefit experience. Separate reserve account: if employer's contributions of preceding yr. exceed benefits and his reserve account equals at least 7½% of preceding annual payroll and 5 times the amount of benefits paid in any of 3 preceding years, his contributions shall be reduced to such % as will provide compensation under this act without reducing the reserve below either of said standards.	Same as B.
VIRGINIA Act No. Senate Bill 1-4 1st Special Session 1936	Pooled Fund	Same as B	0.9%—1936 1.8%—1937 2.7%—1938 and thereafter	None	Same	None	Same as B.

PARISON OF DRAFT BILLS WITH STATE LAWS (*Continued*)

	MERIT RATING	EXEMPTIONS	BENEFITS: TOTAL UNEMPLOYMENT RATE	BENEFITS: TOTAL UNEMPLOYMENT MAXIMUM	BENEFITS: TOTAL UNEMPLOYMENT MINIMUM	BENEFITS: PARTIAL UNEMPLOYMENT	QUALIFICATION PERIOD
	Same as B except if benefits exceed contributions, rate 3.6%	Same as B but also contains: service in employ of insurance co. by agents or representatives.	Same	Same	Same as B	Same as B	Earned 16 times his weekly benefit rate in 4 out of last 5 quarters
	After 1940, if employer's account is 7½-10% of average annual payroll, rate is 1.8%; if account is 10% or more, rate is 0.9%. If contributions are less than benefits rate is 3.6% or 2.7%	Same as B, but also exempts insurance agents who work on commission basis	Same	Same	Same as B	Same as B	Same as B
	After an employer is subject to act for 2 years, when reserve per employee is less than $75, rate is 3%; $75-$100, rate is 1%; $100 or more, no contribution	Same as B.	Same	$18 per week	$6 per week	None	20 weeks employment in 52 weeks
	Pooled fund: after 1940 com'n. determines merit rating on employer's 3 year contribution and benefit experience. Separate reserve account: if employer's contributions of preceding yr. exceed benefits and his reserve account equals at least 7½% of preceding annual payroll and 5 times the amount of benefits paid in any of 3 preceding years, his contributions shall be reduced to such % as will provide compensation under this act without reducing the reserve below either of said standards.	Same as B.	Same	Same	Same as B	Difference between weekly benefit amount and ¾ of his wages	Earned 16 times his weekly benefit rate in 4 out of last 5 quarters
	None	Same as B.	Same	Same	Same as B	Same as B	Earned 16 times his weekly benefit rate in 4 out of last 5 quarters

			CONTRIBUTIONS				
	TYPE OF FUND	COVERAGE	EMPLOYER	EMPLOYEE	STATE	MERIT RATING	EXEMPTION
WASHINGTON Chapter 162 Senate Bill 113 Laws 1937	Pooled fund with separate employer accounts for merit rating only	Same as B	1.8%—1937 2.7%—1938-41 merit rating thereafter	None	Same	Same as A except based on preceding 12 months and minimum is 0.9%, resulting average is 2.7%	Same as B
WEST VIRGINIA Act. No. House Bill 1 2nd Special Session 1936	Pooled fund with separate employer accounts for merit rating only	Same as B	Same as B	None	Same	Same as B except if benefits exceed contributions, rate 3.6%	Same as B
WISCONSIN Chapter 108 Law	Employer Reserve Accounts	Employer of 8 or more within each of 18 weeks	2% from July 1, 1934 thru 1937; 1938 and thereafter based on reserve ratio; standard rate 2.7%	None	Same	After 1937 if reserve percentage is 7½-10%, rate 1%; 10% or more, no contribution. Other merit rating based on specified requirements in the law; maximum, 4%. Also guaranteed employment accounts	Same as A. tains provisi ing (4), (5), and also: e by railroads state comme employment operations, e by state fair Wisconsin N Guard
WYOMING Chapter 113 House Bill 143 Regular Session 1937	Pooled fund with separate employer accounts for merit rating only	Employer of 1 or more within each of 20 weeks	Same as B except merit rating after 1941	None	Same	After 1941, if, during preceding 3 years excess in employer's account is 7½-10%, rate 2%; if excess is 10% or more, rate 1%; if contributions less than benefits, rate 3.6%	Same as B

MPARISON OF DRAFT BILLS WITH STATE LAWS (*Continued*)

ATE	MERIT RATING	EXEMPTIONS	BENEFITS — TOTAL UNEMPLOYMENT — RATE	MAXIMUM	MINIMUM	PARTIAL UNEMPLOYMENT	QUALIFICATION PERIOD
me	Same as A except based on preceding 12 months and minimum is 0.9%, resulting average is 2.7%	Same as B	Same	Same	$7 per week or ¾ of full time weekly wage, whichever is lesser	Same as B	Earned 16 times his weekly benefit rate in his base year
me	Same as B except if benefits exceed contributions, rate 3.6%	Same as B	Same	Same	Same as B	Wages plus benefits equal to $2 more than total unemployment benefits	Same as B
me	After 1937 if reserve percentage is 7½-10%, rate 1%; 10% or more, no contribution. Other merit rating based on specified requirements in the law; maximum, 4%. Also guaranteed employment accounts	Same as A. Also contains provision covering (4), (5), (6), (9), and also: employment by railroads in interstate commerce and employment in logging operations, employment by state fair and by Wisconsin National Guard	Same	$10 if wages less than $25; $12.50 if wages $25-$30; $15 if wages $30 or more	$5 per week	Wages plus benefits equal or exceed total unemployment benefits, as further specified in law	4 weeks employment by given employer
me	After 1941, if, during preceding 3 years excess in employer's account is 7½-10%, rate 2%; if excess is 10% or more, rate 1%; if contributions less than benefits, rate 3.6%	Same as B	60% of wages	$18 per week	$7 per week or ¾ of full time weekly wage, whichever is lesser	Same as B	Earned 14 times his weekly benefit rate in first 3 out of last 4 quarters

COMPARISON OF DRAFT BILLS PREPARED BY FEDERAL AGENCIES WITH UNEMPLOYMENT COMPENSATION LAWS OF STATES
APRIL 1, 1937

PART II

	WAITING PERIOD	RATIO OF BENEFIT WEEK TO DURATION OF PREVIOUS EMPLOYMENT		MAXIMUM DURATION OF ORDINARY BENEFIT	CLAIM PROCEDURE	RECIPROCAL ARRANGEMENT WITH OTHER STATES	NON-LIABILITY OF STATE
		ORDINARY	ADDITIONAL				
A Draft Bill for State Unemployment Compensation prepared by Committee on Economic Security (Senate Hearings February 9, 1935 p. 593)	—weeks in 52 weeks Sec. 7 (3) p. 600	1 to 40 within 104 weeks Sec. 6 (4) p. 599	1 to 20 within 260 weeks Sec. 6 (7) p. 600	—weeks Note suggests 16 weeks or less Sec. 6 (5) p. 599	Claim to be made at employment office and initial determination made by deputy or representative of the Commission. Appeal may be made to appeal tribunal and to the Commission; thereafter to the courts. Sec. 8, pp. 602-603	Provision allowing for reciprocal arrangements Sec. 13, p. 606	Provision for non-liability of state in excess of sum paid into fund Sec. 4 (1) p. 596
B Draft Bill for State Unemployment Compensation prepared by Social Security Board January, 1936	2 weeks in 13 weeks Sec. 4 (d) p. 7	Same Sec. 3 (e) p. 4	Same Sec. 3 (e) p. 4	12 weeks in 52 weeks Sec. 3 (e) p. 4	Same Sec. 6, pp. 12-17	None	Same Sec. 18, p. 43
C Draft Bill for State Unemployment Compensation prepared by Social Security Board September, 1936	Same as B	Same	Same	Same as B	Same	None	Same
ALABAMA Unemployment Compensation Law Chapter 447 Laws 1935 (Page No. refers to pamphlet form of act)	3 weeks in 52 weeks Sec. 6 (c) p. 9	Same Sec. 5 (e) p. 8	Same Sec. 5 (f) p. 8	16 weeks in 52 weeks Sec. 5 (e) p. 8	Same Sec. 7, pp. 10-12	Same as A Sec. 12, p. 16	Same Sec. 3 (a) p. 5
ARIZONA Chapter Senate Bill 3 1st Special Session 1935	Same as B	Same	Same	Same as B	Same except claim is made at place prescribed by Commission	None	Same
ARKANSAS Act No. 155 House Bill 331 Laws 1937	Same as B	None	None	16 weeks in 52 weeks or 1/6 of uncharged wage credits, whichever is lesser	Same except claim is made at place prescribed by commission and appeal is to Industrial Board instead of Commission	Same as A	None
CALIFORNIA Chapter 352 Laws 1935	4 weeks in 12 months through 1938-39; thereafter 3 weeks in 12 months	1 to 4	None	For 52 weeks of contribution, 13 weeks of benefits in 12 months; for 104 contributions 20 weeks in 12 months, plus 6 weeks in ensuing 12 months	Claim to be made at employment office or with deputy of Commission and initial determination made by manager of employment office or deputy. Appeal may be made to Commission	None	Same

COMPARISON OF DRAFT BILLS WITH STATE LAWS (*Continued*)

	WAITING PERIOD	RATIO OF BENEFIT WEEK TO DURATION OF PREVIOUS EMPLOYMENT		MAXIMUM DURATION OF ORDINARY BENEFIT	CLAIM PROCEDURE	RECIPROCAL ARRANGEMENT WITH OTHER STATES	NON-LIABILITY OF STATE
		ORDINARY	ADDITIONAL				
COLORADO House Bill 1, 3rd Special Session 1935	Same as B	Same	None	13 weeks in 52 weeks	Same except claim is made at place prescribed by Commission	None	Same
CONNECTICUT Chapter Senate Bill 5 1st Special Session 1935	Same as B	None	None	13 weeks in 52 weeks	Same except appeal is to Commissioner instead of appeal tribunal and Commission	Same as A	None
DISTRICT OF COLUMBIA Pub. No. 319 74th Congress	3 weeks in 52 weeks	1 to 3 within 104 weeks	Same	16 weeks in 52 weeks	Same	Same as A	None
IDAHO Chapter 12 Laws 1936	5 weeks in 52 weeks	Same	Same	18 weeks in 52 weeks	Claim to be made in accordance with such rules as board may prescribe. After initial determination appeal may be made to board; thereafter to the courts	None	Same
INDIANA Chapter 4 Laws 1936	Same as B	Same	None	15 weeks in 52 weeks	Same except appeal to Board of Review instead of Commission	None	Same
IOWA Senate Bill 1 1st Special Session 1935	Same as B	None	None	15 weeks in 52 weeks or amount equal to balance credited to employee's account, whichever is lesser	Same except claim is made at place prescribed by Commission and appeal is to Board of Review instead of Commission	Same as A	Same
KANSAS Chapter House Bill 542 Laws 1937	Same as B	None	None	Not to exceed 8% of wages earned during base period	Same except claim is made at place prescribed by commission	Same as A	Same
KENTUCKY Act No. Senate Substitute for House Bill 1 Special Session 1936	3 weeks in 26 weeks	Same	None	15 weeks in 52 weeks	Same except no appeal to appeal tribunal	None	Same
LOUISIANA Act No. 97, Laws 1936	4 weeks in 52 weeks	Same	Same	15 weeks in 52 weeks	Same except appeal to Board of Review instead of Commission	None	Same
MAINE House Bill 1883 1st Special Session 1935	Same as B	None	None	16 weeks in 52 weeks or not to exceed 1/6 of total wages earned in base period, whichever is lesser	Same	Same as A	Same

COMPARISON OF DRAFT BILLS WITH STATE LAWS (*Continued*)

	WAITING PERIOD	RATIO OF BENEFIT WEEK TO DURATION OF PREVIOUS EMPLOYMENT		MAXIMUM DURATION OF ORDINARY BENEFIT	CLAIM PROCEDURE	RECIPROCAL ARRANGEMENT WITH OTHER STATES	NON-LIABILITY OF STATE
		ORDINARY	ADDITIONAL				
MARYLAND Chapter 1 House Bill 1 2nd Special Session 1935	Same as B	None	None	16 weeks in 52 weeks or amount equal to balance credited to employee's account, whichever is lesser	Same except claim is made at place prescribed by Commission and appeal is to Board of Review instead of Commission	Same as A	Same
MASSACHUSETTS Chapter 479 Laws 1935	4 weeks in 12 months	Same	1 to 18 within 6 years; after these exhausted, 1 to 26 for which employee contributed	16 weeks in 52 weeks	Same	None	Same
MICHIGAN Chapter House Bill 1 1st Special Session 1936	3 consecutive weeks or 5 weeks in 52 weeks	None	None	16 weeks in 52 weeks	Same except claim is made at place prescribed by Commission and appeal is to Appeal Board instead of Commission	Same as A	None
MINNESOTA Chapter 2 House Bill 11 2nd Special Session 1936	Same as B	None	None	16 weeks in 52 weeks or not to exceed 1/6 of total wages earned in base period, whichever is lesser	Same except claim is made at place prescribed by Commission	Same as A	Same
MISSISSIPPI Chapter 176 Laws 1936 Amended Chapter 3 Laws 1936	Same as B	Same	Same	Same as B	Same	None	Same
MONTANA Chapter House Bill 344 Laws 1937	3 weeks in 13 weeks	None	None	16 weeks in 52 weeks or 1/6 of uncharged wage credits, whichever is lesser	Same except claim is made at place prescribed by Commission	Same as A	Same
NAVADA Assembly Bill 93 Laws 1937	Same as B	None	None	16 weeks in 52 weeks or 1/6 of uncharged wage credits, whichever is lesser	Same except claim is made at place prescribed by Commission and appeal is to Board of Review instead of Commission	Same as A	None
NEW HAMPSHIRE Chapters 99, 142 Laws 1935	3 weeks	Same	1 to 24 within 6 years to maximum of 10 weeks	16 weeks in 52 weeks	Same	Same as A	Same
NEW JERSEY Chapter 270 1st Special Session 1936	Same as B	None	None	16 weeks in 52 weeks or not to exceed 1/6 of total wages earned in base period, whichever is lesser.	Same except claim is made at place prescribed by Commission and appeal is to Board of Review instead of Commission	Same as A	Same

COMPARISON OF DRAFT BILLS WITH STATE LAWS (*Continued*)

	WAITING PERIOD	DURATION OF PREVIOUS EMPLOYMENT RATIO OF BENEFIT WEEK TO ORDINARY	ADDITIONAL	MAXIMUM DURATION OF ORDINARY BENEFIT	CLAIM PROCEDURE	RECIPROCAL ARRANGEMENT WITH OTHER STATES	NON-LIABILITY OF STATE
New Mexico Act No. House Bill 1 1st Special Session 1936	Same as B	None	None	16 weeks in 52 weeks or amount equal to balance credited to employee's account, whichever is lesser.	Same except claim is made at place prescribed by Commission	Same as A	Same
New York Chapter 468 Laws 1935	3 weeks, but not more than 5 weeks in calendar year	1 to 15 days within 52 weeks	None	16 weeks in 52 weeks	Same except no appeal to Commission	None	Same
North Carolina Chapter House Bill 1 1st Special Session 1936	Same as B	None	None	16 weeks in 52 weeks or amount equal to balance credited to employee's account, whichever is lesser	Same except claim is made at place prescribed by Commission	Same as A	Same
North Dakota Chapter Senate Bill 62 Laws 1937	Same as B	None	None	16 weeks in 52 weeks or 1/6 of uncharged wage credits, whichever is lesser	Same except claim is made at place prescribed by Commission and appeal is to Bureau instead of Commission	Same as A	Same
Ohio Chapter House Bill 608 1st Special Session 1935	3 weeks in 52 weeks	None	None	16 weeks in 52 weeks	Same	None	Same
Oklahoma Chapter House Bill 1 1st Special Session 1935	Same as B	None	None	16 weeks in 52 weeks or not to exceed 1/6 of total wages earned in base period, whichever is lesser.	Same except claim is made at place prescribed by Commission, and appeal is to Board of Review instead of Commission.	Same as A	Same
Oregon House Bill 71, Special Session 1935	3 weeks in 52 weeks	Same	None	15 weeks in 52 weeks	Same except no appeal to appeal tribunal	None	Same
Pennsylvania Act No. 1 House Bill 1 2nd Special Session 1935	3 weeks in 52 weeks	None	None	13 weeks in 52 weeks or not to exceed 1/8 of total wages earned in 1st 8 of preceding 9 quarters, whichever is lesser	Same except claim is made at place prescribed by Commission and appeal is to Board instead of appeal tribunal and Commission	Same as A	Same
Rhode Island Chapter 2333 Laws 1936	3 weeks in 52 weeks	Same	Same	20 weeks in 52 weeks	Same	Same as A	Same
South Carolina Act No. 768 Laws 1936	Same as B	Same	Same	Same as B	Same	None	Same
South Dakota Chapter House Bill 1 Special Session	Same as B	None	None	16 weeks in 52 weeks or amount equal to balance credited to employee's account, whichever is lesser	Same except claim is made at place prescribed by Commission.	Same as A	Same

COMPARISON OF DRAFT BILLS WITH STATE LAWS (Continued)

	[illegible]	[illegible]	[illegible]	MAXIMUM EXTENSION OF ORDINARY BENEFITS	CLAIM PROCEDURE	[illegible]	[illegible]
Tennessee Senate Bill 1 3rd Special Session 1936	3 weeks in 12 weeks	None	None	16 weeks in 52 weeks or amount equal to balance credited to employer's account, whichever is lesser	Same except claim is made at place prescribed by Commission and appeal is to Board of Review instead of Commission.	Same as A	Same
Texas H. B. 3 Third Special Session 1936	Same as B	Same	Same	15 weeks in 52 weeks	Same	None	Same
Utah Chapter 28 Laws 1937	Same as B	1 to 3 within 52 weeks	None	16 weeks in 12 months	Same except place of making claim is not stated in law	None	Same
Vermont Act No. Senate Bill 1 3rd Special Session Approved 1936	3 weeks in 52 weeks	None	None	14 weeks in 52 weeks or amount equal to balance credited to employer's account, whichever is lesser	Same except claim is made at place prescribed by Commission and appeal is to [illegible] instead of appeal tribunal	Same as A	Same
Virginia Act No. Senate Bill 1-a 1st Special Session 1936	Same as B	None	None	16 weeks in 52 weeks or an amount equal to balance credited to employer's account, whichever is lesser.	Same except claim is made at place prescribed by Commission.	None	Same
[illegible] Chapter 142 Senate Bill 113 Laws 1937	Same as B	None	None	16 weeks in 52 weeks or 1/6 of uncharged wage credits, whichever is lesser	Same except claim is made at place prescribed by Commission, and appeal is to [illegible] Board of Commission	Same as A	Same
West Virginia Act No. House Bill 1 3rd Special Session 1936	Same as B	Same	None	12 weeks in 52 weeks	Same except claim is made at place prescribed by Commission.	Provision allowing for cooperation with other states.	Same
Wisconsin Chapter 189 Laws	3 weeks in 52 weeks	1 to 4 within 52 weeks within benefit rate is $10 a week; 1 to 5 within benefit rate is $12.50; 1 to 6 within benefit rate is $15	None	Between 14 and 20 weeks within 52 weeks as computed under the ratio provision	Same	None	Same
[illegible] Chapter 126 [illegible] 1937	Same as B	None	None	14 weeks in 52 weeks or 1/6 of uncharged wage credits, whichever is lesser	Same except claim is made at place prescribed by Commission.	Same as A	Same

In the Supreme Court of the United States.

OCTOBER TERM, 1936

No. —

CHAS. C. STEWARD MACHINE COMPANY, A CORPORATION, PETITIONER

v.

HARWELL G. DAVIS, INDIVIDUALLY AND AS COLLECTOR OF INTERNAL REVENUE, FOR THE DISTRICT OF ALABAMA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT

We join in the petitioner's request for a writ of certiorari.

The case squarely presents the single issue of the constitutionality of the taxes imposed by Title IX of the Federal Social Security Act (Act of August 14, 1935, c. 531, 49 Stat. 620; U. S. C. Sup. II, Title 42, c. .). While we believe the decision of the Circuit Court of Appeals is correct, it is of the greatest public importance that the validity of such taxes

be definitely settled as soon as possible. The issue directly affects many thousands of taxpayers throughout the country. A prompt decision is also important to the Government. Large sums of money have already been expended, and more will be expended in the future in the administration of the Act. Delay in the determination of this question of outstanding importance may result in a multitude of suits clogging the dockets of the courts, harassing the Government, and greatly overtaxing its facilities for the orderly handling of such litigation. For these reasons a final decision with respect to the validity of the tax here challenged would be in the public interest. Accordingly, we do not oppose the granting of the writ.

Respectfully submitted.

STANLEY REED,
Solicitor General.

MARCH 1937.

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No. 837

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OCTOBER TERM, 1936

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HARWELL G. DAVIS, INDIVIDUALLY AND AS COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF ALABAMA, RESPONDENT

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENT

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In the Supreme Court of the United States

OCTOBER TERM, 1936

No. 837

CHAS. C. STEWARD MACHINE COMPANY, PETITIONER

v.

HARWELL G. DAVIS, INDIVIDUALLY AND AS COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF ALABAMA, RESPONDENT

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENT

OPINIONS BELOW

The District Court did not write an opinion. The opinion of the Circuit Court of Appeals for the Fifth Circuit (R. 27–33) has not yet been officially reported.

JURISDICTION

The judgment of the Circuit Court of Appeals for the Fifth Circuit was entered on March 20, 1937 (R. 33). The petition for a writ of certiorari was filed on March 26, 1936 (R. 34), and was

granted on March 29, 1937 (R. 34). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether the tax imposed by Title IX of the Social Security Act is a valid exercise of the power of Congress under Article I, Section 8, Clause 1 of the Constitution.

2. Whether the tax under Title IX is imposed in violation of the Fifth Amendment.

3. Whether the tax under Title IX is imposed in violation of the Tenth Amendment or the principle that the dual nature of our government must not be impaired.

4. Whether the grants-in-aid to the States authorized under Title III of the Social Security Act are in issue, and, if so, whether they are valid.

STATUTE INVOLVED

The Social Security Act (Act of August 14, 1935, c. 531, 49 Stat. 620, U. S. C., Supp. II, Title 42, c. 7) is divided into eleven independent titles, many of which might well have been enacted as separate statutes. For the convenience of the Court, the entire Act is set forth in the Appendix, pp. 1–63.

Of the eleven titles only two (Titles VII and XI) are of general application to the entire Act. Title VII provides for the creation of a Social Security Board to perform such functions as may be imposed upon it by other parts of the Act. Title XI consists of general provisions such as certain basic definitions, provision for administrative rules and regulations, a separability clause, a reservation of the right to alter, amend or repeal any provision of the Act, and finally, a section giving the Act its name, the "Social Security Act".

In this proceeding Title IX alone, of the substantive titles, impinges upon petitioner. No other title can possibly be involved unless it be Title III, which authorizes certain appropriations for grants to States. We will later show, however, not only that Title III is not in issue, but that it is in any event a constitutional exercise of power.

TITLE IX

Title IX imposes an annual excise tax upon employers with respect to having individuals in their employ, measured by wages payable with respect to employment during the calendar year. Section 901. The tax begins with the year 1936, and is payable for the first time on January 31, 1937. It is not applicable to certain types of employment ~~such as~~ including agricultural labor,

domestic service and other designated categories. Section 907 (c). And the term "employer" is defined to exclude those who do not employ at least eight persons. Section 907 (a). The rate is 1 percent of the total wages payable during the year 1936, 2 percent of those payable during the year 1937, and 3 percent thereafter.

The proceeds of the tax are not earmarked in any way, and are required to be paid into the Treasury of the United States as internal revenue collections. Section 905 (a). Mechanically, as to payment, filing of returns, penalties, and the like, Title IX operates in very much the same manner as any other internal revenue measure. See Section 905.

Pursuant to Section 902, a taxpayer is allowed to credit against the tax (not to exceed 90 percent thereof) the amount of contributions paid by him into an unemployment fund under a *state* law. Such deduction, however, may be taken only with respect to contributions made under state laws certified by the Social Security Board. The Board must make such certification whenever the state law meets certain minimum definitional criteria (Section 903), designed to permit the credit only where the state fund is established under a *bona fide* unemployment compensation measure providing for adequate financial reserves.[1]

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[1] Beginning with the year 1938 a certain "additional" credit is permitted by Section 909. Since the tax for that

One further condition for the allowance of the credit is that the applicable state law require that the contributions to the state fund be immediately paid over to the Secretary of the Treasury to the credit of the "Unemployment Trust Fund". Sections 903 (a) (3), 904. The Secretary of the Treasury is merely the custodian of that fund, exercising no control whatever over a state's administration of its unemployment compensation measure, and the authorized agency of any State may at any time requisition *for any purpose* any or all of the money standing to its credit on the books of the Fund. Sections 904 (f), 903 (a) (4). Further, it is important to observe that the Unemployment Trust Fund consists exclusively of deposits of *state* funds, and does not include any of the taxes collected under Title IX, all of which, as stated above, are paid into the general Treasury as internal revenue collections.

In its basic structure, therefore, Title IX imposes an excise tax upon employers, permitting a deduction not exceeding 90 percent of the tax for amounts paid by the taxpayer to a state unemployment fund.

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year becomes due for the first time on January 31, 1939, it is clear that neither such "additional" credit nor the related provisions in Section 910 can be involved in this case. For the possible convenience of the court, that additional credit is discussed in the Appendix at pages 84–96.

TITLE III

Title III is entitled "Grants to States For Unemployment Compensation Administration." It is not a taxing measure. Under this title there is "authorized to be appropriated"[2] for the fiscal year ended June 30, 1936, the sum of $4,000,000, and for each fiscal year thereafter the sum of $49,000,000, "for the purpose of assisting the States in the administration of their unemployment compensation laws." Section 301. The appropriation is not authorized to be paid out of any particular revenues or funds in the Treasury, nor is there any provision that connects it with the tax in Title IX. Further, the authorized grants are merely to assist the states in the *administration* of their laws, and no part thereof is authorized for use as unemployment compensation. The latter may be made only from non-federal funds.

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[2] Title III, it should be noted, makes no appropriation of any sum; it merely authorizes future appropriations. The authority to appropriate in Section 301 has no legal effect beyond compliance with Rule XXI, Clause 2, Jefferson's Manual and Rules of the House of Representatives. Under that Rule it merely states the maximum that may properly be appropriated; future Congresses may appropriate less, or nothing, if they wish. Actually only $2,250,000 of the $4,000,000 authorized was appropriated for the fiscal year ending June 30, 1936 (Act of February 11, 1936, c. 47, 49 Stat. 1109, 1113), and $29,000,000 of the $49,000,000 authorized for the fiscal year ending June 30, 1937 (Act of June 22, 1936, c. 689, 49 Stat. 1597, 1605).

Section 302 prescribes the method by which payments are to be made to the states. The Social Security Board is required to certify to the Secretary of the Treasury the amount to be disbursed to each State. The Board's determination is required to be based upon the population of the State, the number of persons covered by the state law, an estimate of the cost of proper administration and such other factors as the Board finds relevant.

Section 303 makes certification by the Board subject to certain conditions relating to the proper and efficient administration of state laws, the disposition of the funds granted, and an accounting therefor. These conditions are so worded that they give the Federal Government no assurance other than that the moneys granted by it will not be expended for any purpose other than the one for which they are granted, and will be used in the administration of genuine unemployment compensation laws.

STATEMENT

On March 10, 1937, Chas. C. Steward Machine Company, petitioner herein, filed a petition at law in the United States District Court for the Northern District of Alabama, praying recovery against respondent in the sum of $46.14 (R. 5). On the same day respondent filed a demurrer to the petition (R. 13). The allegations of the petition, as

admitted by the demurrer, may be summarized as follows:

The Chas. C. Steward Machine Company is a corporation organized under the laws of Alabama, with its principal place of business at Birmingham, Alabama, and is engaged in the manufacture of coal mining machinery (R. 5). Harwell G. Davis, the respondent, is the Collector of Internal Revenue for the District of Alabama (R. 5).

On March 2, 1937, petitioner paid to the respondent the sum of $46.14, the tax imposed upon petitioner as an employer of eight or more persons by Title IX of the Social Security Act for the period from January 1, 1936, to December 31, 1936 (R. 6). On the same day petitioner filed with the Commissioner of Internal Revenue a claim for refund of the tax (R. 8, 9) alleging that it was unconstitutional for a variety of reasons (R. 10–11). The claim was denied by the ~~petitioner~~ Commissioner on March 9, 1937 (R. 8, 12).

The demurrer to the petition was sustained by the District Court on March 11, 1937 (R. 16). Petition for an appeal was filed and allowed on the same day (R. 17, 20). The case was submitted to the Circuit Court of Appeals for the Fifth Circuit on March 12, 1937 (R. 26). That Court, on March 20, affirmed the judgment and order of the District Court (R. 33).

THE CIRCUMSTANCES WHICH "FURNISH THE OCCASION FOR THE EXERCISE OF POWER" CONFERRED UPON CONGRESS BY ARTICLE I, SECTION 8, CLAUSE 1, OF THE CONSTITUTION *

Before addressing ourselves to the question of the power of Congress to enact the tax under review, we here summarize [3] the circumstances which "furnish the occasion for the exercise of power." These circumstances "do not call into life a power which has never lived," but "afford a reason for the exertion of a living power already enjoyed" [4]—that is, the power "to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States." [5]

This taxing statute was enacted because of the drain which unemployment had made, and was likely to make in the future, upon the revenues of the nation.

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*Analytical and research assistance has been furnished by: Robert P. Bingham; Berniece N. Lotwin; Elliott H. Moyer; Peter Seitz; Frank H. Sloss; Morton Stavisky; Prof. Harry Shulman.

[3] In order to abbreviate this part of the brief, we shall so far as possible incorporate by reference tables and citations presented to this Court by the "Economic Brief" for the appellee in No. 49, *W. H. H. Chamberlin, Inc. v. Andrews*, Oct. Term, 1936. That brief will hereafter be cited as "N. Y. Brief in No. 49."

[4] *Home Bldg. & Loan Assn.* v. *Blaisdell*, 290 U. S. 398, 426.

[5] U. S. Const., Art. I, Sec. 8, Cl. 1.

Experience[6] had shown that unemployment had ceased to be an occasional or local problem, but has become a permanent and widespread characteristic of our industrial economy.[7] Its magnitude in normal, in boom and in depression times is impressive. In the period of great industrial expansion from 1897 to 1926, unemployment in manufacturing, transportation, building and mining averaged more than 10 percent and reached a high level of more than 3 million persons.[8] From 1920 to 1929, when the country was extremely prosperous, the number of unemployed in non-agricultural industries fluctuated between 1,400,000 and more than

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[6] This experience is reviewed in the Report of the President's Committee on Economic Security (1935), 74th Cong., 1st Sess.; Hearings Before the Senate Committee on Finance on S. 1130, 74th Cong., 1st Sess.; Hearings before the House Committee on Ways and Means on H. R. 4120, 74th Cong., 1st Sess.; Senate Rep. No. 628, 74th Cong., 1st Sess.; and House Rep. No. 615, 74th Cong., 1st Sess.

[7] N. Y. Brief in No. 49, pp. 2, 5, 79–94. Report of Pres. Hoover's Committee on *Recent Social Trends;* J. M. Clark, *Economics of Overhead Costs* (1923), p. 360; Webb, S. and B., *English Poor Law History*, Part II, *The Last Hundred Years*, Vol. 2, p. 631; Beveridge, W. H., *Unemployment, A Problem of Industry* (1930), pp. 68, 100–103; Hansen, *Business Cycle Theory*, p. 2; Douglas, Hitchcock and Atkins, *The Worker in Modern Economic Society* (1925), p. 242; Douglas, P. H., *Real Wages in the United States 1897–1926* (1930).

[8] Douglas, P. H., *Real Wages in the United States 1897–1926*, p. 460; Douglas, P. H. and Director, A., *The Problem of Unemployment* (1931), pp. 32, 28; N. Y. Brief in No. 49, p. 15, their table 20, p. 184, and their chart 7, page 15; our table 7, Appendix, page 67.

4 million, and was more than 1,800,000 in 1929.[9] In the period from 1929 to 1936, when the country was passing through a cyclical depression, the unemployed often averaged more than 10 million, and occasionally, according to the most conservative of varying estimates, approximated 16 million.[10] Although these last figures, which show that at times the wage-earners of one-third[11] of our families were directly affected, are abnormal, it is clear from the statistics as a whole that large unemployment in our civilization is a permanent phenomenon,[12] covering all States (often in about the same proportion[13]), reaching at various times into

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[9] Report of Pres. Hoover's Committee on *Recent Social Trends*, Vol. II, p. 478, 498; N. Y. Brief in No. 49, p. 15, their table 21, p. 184.

[10] See Table 20, Appendix, p. 77; International Labour Office, Studies and Reports, Series B (Economic Conditions) No. 20, *Social and Economic Reconstruction in the United States* (1934) Chap. III, pp. 54–55; *International Labour Review*, January 1936, p. 80.

[11] *Social and Economic Reconstruction in the United States*, *supra*, pp. 54, 55. Compare the statement in the Report of the Committee on Economic Security (Hearings before the House Committee on Ways and Means, 74th Cong., 1st Sess., on H. R. 4120, p. 67) that in 1934 over 19 million persons, or over 15% of the population, were receiving from the national government assistance under the general relief and special programs.

[12] Harry L. Hopkins, Works Progress Administration Administrator, has said that "it is reasonable to expect a probable minimum of 4,000,000 to 5,000,000 unemployed even in future 'prosperity' periods." *The New Republic*, Feb. 10, 1937.

[13] Appendix p. 67, Table 8.

all industries,[14] diminishing the actual productive capacity of the nation,[15] and creating continuous public relief problems.[16]

There is disagreement among experts as to the causes of this large volume of unemployment. The complexity of our modern interdependent economic life, the necessity of a "labor reserve", technological advance, seasonal fluctuations, style changes, shifting markets, and bad judgment are blamed in varying degrees by different experts.[17] But no informed person suggests that in the majority of cases the individual worker loses his job through his personal incapacity or dereliction. The loss comes to him as a disaster over which he has and can have no control.

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[14] The widespread incidence of unemployment is thoroughly discussed in the N. Y. Brief in No. 49, pp. 20–25. See particularly their Table 7, p. 21.

[15] Appendix p. 69, Table 10. The figures in that table show that the people of the nation were, by reason of unemployment, denied goods and services equal to nearly two-fifths of the quantity that they were actually furnished by the gainfully employed.

[16] See N. Y. Brief in No. 49, pp. 28–43.

[17] For varying explanations of the causes of unemployment, see Report of Pres. Hoover's Committee on *Recent Social Trends;* J. M. Clark, *Economics of Overhead Costs* (1929), pp. 366–367; N. Y. Brief in No. 49, pp. 1–3; W. C. Mitchell, *Business Cycles; the problem and its setting* (1927), p. 61; Hansen, *Business Cycle Theory*, p. 2; Douglas, Hitchcock, and Atkins, *The Worker in Modern Economic Society* (1925), p. 242; Beveridge, *Unemployment, a Problem of Industry* (1930), pp. 100–103.

The disaster is not merely a personal misfortune, for when the breadwinner stops earning money his family, and ultimately society, suffer.[18] Very soon the average family of the unemployed must change its habits. First it reduces its standard of living:[19] at once it eliminates luxuries and the purchase of even such necessities as clothing;[20] it withdraws from the group contacts so essential not only to the family's own morale,[21] but also to the functioning of a highly civilized society; then it makes drastic economies in food,[22] even requiring infants and expectant mothers to go without milk or adequate nutrition,[23] and prejudicing the health of

[18] Epstein, A., *Insecurity, A Challenge to America* (3d ed., 1936) p. 198.

[19] Goodrich, Carter, *Earnings and standard of living of 1,000 railway employees during the depression* (U. S. Department of Labor, 1934).

[20] U. S. Department of Labor, Women's Bureau, Bulletin No. 108, *The Effect of the Depression on Wage Earners' Families*, p. 20.

[21] N. Y. Brief in No. 49, p. 58.

[22] Hall, Helen, *Case Studies of Unemployment* (1931); U. S. Department of Labor, Women's Bureau, Bulletin No. 108, *The effect of the depression on wage earners' families*, p. 9; N. Y. Brief in No. 49, pp. 49–50, 53.

[23] Lenroot, K., *Children of the Depression*, Social Service Review (June 1935) pp. 219, 212–242; Williams, J. M., *Human Aspects of Unemployment and Relief* (1933) p. 49; Eliot, Martha M., *Some Effects of the Depression on the Nutrition of Children*, printed in Hospital Social Service December 1933.

every member of the family;[24] soon, as a result of voluntary action or eviction, it moves to a dwelling in a poorer neighborhood, often "doubling up" with another family in a tenement.[25] At the same time, the family is concerned about not increasing its numbers: unemployment discourages new marriages and new births to couples already married.[26] The severe effect of these cumulative restraints is before long reflected in an increase of physical[27] and mental[28] illness which overcrowds hospitals. Moreover, deprived of a normal way of life and a normal satisfaction of their needs, the younger members of the family of the unemployed are likely to become vagrants or criminals.[29]

In addition to promoting these evils, which are not purely personal, but affect the general well-being of society and the manpower of the country,

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[24] N. Y. Brief in No. 49, pp. 52–53; Perrott, G. St. J., and Collins, S. D., *Relation of Sickness to Income and Income Change*, Public Health Reports, May 3, 1935, pp. 595–622; Palmer, Carroll E., *Height and Weight of Children of the Depression Poor*, printed in Public Health Reports, Aug. 16, 1935, p. 1106.

[25] N. Y. Brief in No. 49, pp. 50–51; Brandt, L., *An impressionistic View of the Winter of 1930–1931 in New York City* (1932) pp. 9–10.

[26] The decline of the marriage and legitimate birth rate is discussed with appropriate citations in N. Y. Brief in No. 49, pp. 54–55.

[27] *Id.*, p. 52.

[28] *Id.*, pp. 53, 54.

[29] *Id.*, pp. 55–57; U. S. Department of Justice, Federal Bureau of Investigation, *Uniform Crime Reports* (1936) p. 50; National (Wickersham) Commission on Law Observance and Enforcement, Report (No. 13) on the *Causes of Crime* (1931) Vol. 1, p. 312.

widespread unemployment indirectly saps the whole economic structure. The large total loss of income which accompanies widespread unemployment markedly curtails consumer demand;[30] that curtailment in turn reduces production, since production in a profit-making system is keyed to anticipated sales; and this reduction of production automatically causes increased unemployment. Thus unemployment promotes unemployment and the forces impairing the general welfare constantly augment themselves.

Although the intelligent workman undoubtedly foresees the dilemma in which he and his family may be caught, he is almost as powerless to protect himself against unemployment as he is to prevent its occurrence. He and his family seldom receive enough money to provide against the risks of unemployment[31] as well as of sickness,[32] accident and

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[30] See authorities cited in footnote 15, page 12, *supra;* N. Y. Brief in No. 49, pp. 44–46, particularly their chart 22, p. 45.

[31] The average worker in the course of his 45 working years will pass through 8 or 10 depressions (Clark, J. M., *Strategic Factors in Business Cycles*, 1934, p. 11) during which employment will fall off from 10 to 30 percent. Douglas, P. H., and Director, A., *The Problem of Unemployment*, 1931, p. 32, and *Social and Economic Reconstruction in the United States*, International Labour Office, Studies and Reports, Series B, No. 20, 1934, pp. 54–55.

[32] Falk, I. S., *Security Against Sickness* (1930) pp. 15–17, estimates that families with incomes ranging from $1,200 to $2,500 have an average charge for medical care of $86, while those with incomes of less than $1,200 expend an average of $49. Of course, the average hardly tells the story, since a

death.[33] A brief reference to statistics will conclusively prove this. In the highly prosperous year 1928 the *average* income of the 46,704,275 *individuals* in the United States who received any income whatsoever was $1,816,[34] a figure undoubtedly higher than it has ever been before or since.[35] And in that year 80 percent of those *individuals*, or

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single disabling illness may at any time involve even the poorest family in an expense higher than the average.

[33] In a study of typographers' families in San Francisco, Miss Peixotto notes: "Exclusive of the money put into their houses, the most characteristic form of investment was an insurance policy carrying a premium of less than $100 a year, with usually no other savings. Forty-eight men, 59 percent of the whole group of 82 families, carried life or accident insurance, or both. The average premium paid fell between $60 and $70 * * *." (Peixotto, Jessica B., *How Workers Spend a Living Wage. A Study of Incomes and Expenditures of Eighty-two Typographers' Families in San Francisco.* Heller Committee for Research in Social Economics of the University of California. Cost of Living Studies, pp. 161–245 in volume including series of studies; p. 183, (1929). Taylor summarized the situation as follows: "Approximately between one-half and two-thirds of the dependent population in the United States in normal times are paying insurance premiums. * * * The average dependent family carries in excess of one thousand dollars of insurance spread over its members. * * * The average weekly premium expenditure for all families was $1.15." (Taylor, Maurice, *Social Cost of Industrial Insurance*, p. 343). Compare Appendix page 69, Table 11, Item 8.

[34] See Appendix page 65, Table 3.

[35] See Appendix pages 68, 75, Table 9, 18. In 1929 the average wage of employees in the manufacturing industry was only about $1,300. Martin, Robt. F., *National Income and Its Elements*, pp. 23, 28, 29. See the even lower figures for Ohio in that year, Appendix page 76, Table 19.

over 37 million persons, received less than $2,000 each.[36] If instead of looking at individuals, we turn to *family* income, we find that in this same year, 1928, 55 percent of all non-farm families received less than $2,000 and 76 percent less than $3,000.[37] Other years show even lower figures.[38] Moreover, low individual incomes imply low family incomes inasmuch as sample studies indicate that the earnings of husbands constitute 89 percent of the average family income,[39] and that in 77 percent of all families the husband or some other one person is the sole provider of family revenue.[40]

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[36] It is, of course, much less significant to know the average income than to know the number of persons in each economic group. The number of persons in each group in 1910 is shown at Appendix page 64, Table 1; in 1918 at Appendix page 64, Table 2; and in 1928 at Appendix page 65, Tables 3 and 4.

[37] See Appendix, page 66, Table 5.

[38] See Appendix, page 66, Table 6. Compare N. Y. Brief in No. 49, p. 47, and authorities there cited. See also *America's Capacity To Produce*, *supra*, pp. 187–205; *National Income in the United States, 1929–1935*, U. S. Dept. of Commerce (1936), pp. 44, 48.

[39] U. S. Bureau of Labor Statistics, Bull. No. 357, *Cost of Living in the United States* (1924) p. 4.

[40] U. S. Bureau of Labor Statistics, *Incomes Received and Rents Paid by Chicago Families*, Feb. 23, 1937, Table 6. For an analysis demonstrating how little the poorer families receive from income supplementing the wages of the principal breadwinner, see Houghteling, L., *The Income and Standard of Living of Unskilled Laborers in Chicago* (1931) pp. 50, 73.

Starting from such a small income, the average worker does not get even the amount necessary in 1929 to support an urban family at a minimum level of health and decency.[41] Skimp as he may, the average worker (as shown by independent sample studies in the North [42] and in the South [43]) often runs into a deficit [44] and even if continuously employed seldom succeeds in saving as much as $50 a year. These savings are frequently consumed in periods of sickness (see footnote 32 on page 15, *supra*) and absence from work and are almost cer-

[41] See the minimum budget in 1929 for a self-supporting Chicago family reprinted in the Appendix, p. 69, Table 11. And note the correlation of this budget to years other than 1929 in the Appendix, p. 70, Table 12. Compare the budget of New York families considered in National Industrial Conference Board, *The Cost of Living in New York City, 1926*, p. 114.

[42] See Appendix, pp. 70, 71, Tables 13, 15. Compare U. S. Dept. of Labor, Bureau of Labor Statistics, preliminary mimeographed report on the Urban Study of Consumer Purchases, entitled *Incomes Received and Rents Paid by Chicago Families* (Feb. 23, 1937), p. 1.

[43] See Appendix, p. 71, Table 14. Compare Lenroot, K., *Children of the Depression*, Soc. Serv. Rev., June 1935, pp. 219–222.

[44] In addition to the tables referred to in the two preceding footnotes, see U. S. Department of Labor, *Monthly Labor Review*, Vol. 29, pp. 41–61, for a study of *Cost of Living of Federal Employees in Five Cities;* U. S. Dept. of Labor, Bulletin No. 357, *Cost of Living in the United States*, 1918–1919, pp. 4, 5, 447.

tain to disappear in periods of part-time employment or seasonal unemployment.[45]

Anything which is left, if it is not lost in bank failures, is completely drained by the worker's needs in periods of cyclical depression. This is proved by the evidence of the last depression: from 1930 to 1934 over 13 million depositors closed their savings accounts, and withdrawals totaled more than 7 billion dollars;[46] in 1932 and 1933, 11,654,000 industrial insurance policies having a face value of $24,109,644,000 were surrendered while 32,-

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[45] A very large part of savings are consumed in periods of part-time employment and voluntary or involuntary absence from work. It has been estimated that the average worker spends 8 percent of his working life in such periods. Douglas, P. H., *Real Wages in the United States, 1890–1926* (1930) p. 588. If this is correct, then long before the depression, these periods exhaust his savings. In any event, once the depression comes, savings are soon exhausted. By January 1935 over 20 million persons, having exhausted all available assets, were on public relief rolls. Federal Emergency Relief Administration, Release No. 8665, December 1935 (Table I thereof). Probably prior to that date, a large proportion of them were in debt as a result of small sums they had borrowed either without security or on chattels or assignments of future wages. Robinson, L. N. and Nugent, R., *Regulation of the Small Loan Business* (N. Y. 1935) p. 55; Clark, Evans, *Financing The Consumer* (1930) p. 213.

[46] American Bankers Assn., Savings Bank Division, *Savings Deposits and Depositors in Banks and Trust Companies of the United States for the years 1930 and 1935*, p. 2. See corroborative statement N. Y. Brief, No. 49, p. 48, particularly footnote 37.

410,000 such policies having a face value of $7,554,972,000 were allowed to lapse."[47] By June 1933 workers were losing the equities they had in their homes at the rate of 1,000 houses per day.[48]

If, from the foregoing, it is clear that the average individual worker cannot, by taking heed in advance, protect himself against his future days of unemployment, it is equally clear that once the day has arrived, adequate funds cannot usually be had by resort merely to the resources of the worker's relatives, his employer, private charity, and local governments.

It is well known that relatives of the unemployed worker, usually being in the same economic group as the worker, cannot long carry the burden.[49] Those few private employers who have generously and voluntarily established plans to deal with unemployment rarely make anything like adequate provision, and frequently have found that even the limited schemes which they adopted were beyond their capacity to carry through unaided.[50] Al-

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[47] The Insurance Yearbook of the Spectator Co., New York, N. Y., *Statistical Abstract of the United States* (1935) p. 279.

[48] Federal Home Loan Bank Board, *The Home Owners' Loan Corporation, Its Purposes and Accomplishments, June 13, 1933 to June 13, 1936*, pp. 1, 2, 5.

[49] Givens, M. B., *Statistical Measures of Social Aspects of Unemployment*, in *Journal of American Statistical Association*, September, 1931, p. 311; N. Y. Brief in No. 49, p. 49.

[50] See N. Y. Brief in No. 49, pp. 99–107, and authorities there cited.

though private charities at all times do much to relieve the unemployed, they cannot, even when their responses are the most magnanimous, even approximate their needs.[51] A dramatic example is furnished by the private Emergency Unemployment Relief Committee in New York City which, through heroic efforts, raised in 1931–1932 almost 20 million dollars, an amount which by 1934 would have carried the city's relief load for scarcely more than a month.[52] At the same time that resort is had to private charities, resort is had to state and local governments. These governments, if they have no contributory or special tax system, exhaust their reserves and their credit in meeting ordinary part

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[51] Private charities in cities having over 30,000 population expended, for relief for homeless men and families outside of institutions, $5,819,239 in the first quarter of 1929, and $22,468,161 in the first quarter of 1931. U. S. Department of Commerce, *Relief Expenditures by Governmental and Private Organizations 1929 and 1931* (1932) pp. 6, 8. Although this meant an increase of 286.1 per cent in private philanthropy, the total was never more than two-thirds of what local governments expended, and a mere pittance compared with what the national government ultimately spent for the corresponding periods of time. See Appendix pages 72–73, Table 16. In July 1935 private funds accounted for only 1.1 percent of the total relief expenditures, and in July 1936 the percentage had risen to only 2.7. Social Security Board, *Changes During July 1936 in Different Types of Public and Private Relief in Urban Areas* (October 19, 1936) Table 1 thereof.

[52] N. Y. Brief in No. 49, p. 28, n. 23.

time and intermittent unemployment. Thus they enter a cyclical depression unprepared. In such a disaster, lacking a special fund for unemployment, crippled by tax delinquency,[53] facing a resistant bond market,[54] and unable to meet their ordinary expenses,[55] they soon are forced to call upon the national government.

The recent experience of the national government in response to such a call for funds is common knowledge. See *West Coast Hotel Co.* v. *Parrish*, No. 293, October Term, 1936, March 29, 1937. After vainly trying to solve the problem through voluntary private action, such as the share-the-work movement, the national government was forced to use the same taxing and spending power here involved to effectuate a policy which began with loans through the Reconstruction Finance Corporation to private corporations and local governments,[56] and proceeded to include grants to local governments for relief,[57] expenditures for

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[53] U. S. Department of Commerce, Bureau of the Census, *Current Tax Delinquency* (1934).

[54] Bird, Frederick L., *Municipal Credit in the United States*, included in *Taxation and Public Policy* (Studenski, ed.; 1936) ch. VII; King, Clyde L., *Public Finance*, 1935, p. 549.

[55] Norton, John K., *American Educational Finance*, included in *Taxation and Public Policy* (Studenski, ed.; 1936) ch. VI.

[56] Act of Jan. 22, 1932, c. 8, 47 Stat. 5; Act of July 21, 1932, c. 520, 47 Stat. 709.

[57] Act of May 12, 1933, c. 30, 48 Stat. 55.

public works,[58] including allied efforts such as the Civilian Conservation Corps;[59] and eventually expenditures for direct relief or work relief.[60] Without measuring precisely the extent to which the national government shared with the States this financial burden of providing for the unemployed, it will be enough to recall that although between January 1, 1933, and July 1, 1936, the States incurred obligations of $689,291,802 for emergency relief, and local subdivisions of government incurred an additional $775,675,366, the national government was forced to incur, for emergency relief alone, more than twice as much, or $2,929,307,125.[61] According to the President's budget message for the fiscal year 1938, the national government's total expenditures for public works and unemployment relief for the three fiscal years 1934, 1935 and 1936 was $8,681,000,000. Thus, mirrored large in the depression, we see the role which the national government must take in our complex industrial civilization to care for the unemployed whose constant presence is a concomitant of that civilization.

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[58] Act of July 21, 1932, c. 520, 47 Stat. 709; Title II of Act of June 16, 1933, c. 90, 48 Stat. 195, 200, and subsequent statutes.

[59] Act of March 31, 1933, c. 17, 48 Stat. 22, and subsequent statutes.

[60] Act of Feb. 15, 1934, c. 13, 48 Stat. 351; Title II of Act of June 19, 1934, c. 648, 48 Stat. 1021, 1055; Act of April 8, 1935, c. 48, 49 Stat. 115; Title II of Act of June 22, 1936, c. 689, 49 Stat. 1597, 1608.

[61] See Appendix, pages 72–75, Tables 16 and 17.

Recognizing the permanency of the unemployment problem, and the inevitability of continual large drains on the federal treasury if no new program were fostered, public authorities considered how best to meet the problem. No informed person supposed that even by foresight and prudence complete financial provision could be made for all unemployment, including that in cyclical depressions.[82] Experts, however, did conclude that the adoption of unemployment compensation systems (that is, systems under which money is regularly contributed to a fund held to pay benefits to workers when they became unemployed) would mitigate the severity of depressions and the drain on the federal treasury in two ways: first, they would prevent that exhaustion of the resources of workers, charities and local governments which now occurs in ordinary periods of occasional unemployment long before any cyclical depression,[83] and second, such systems would prevent the onset, or lessen the destructive effect of, cyclical depressions by making available to meet the emergency a stored-up fund of consumer purchasing power.[84]

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[82] *Report of the President's Committee on Economic Security* (1935) pp. 13–14; S. Rep. No. 628, 74th Cong., 1st Sess., p. 11; H. Rep. No. 615, 74th Cong., 1st Sess., p. 7.

[83] See Lubin, I., *The Absorption of the Unemployed by American Industry* (1929); Clague, E., Couper, W. J., Bakke, E. W., *After the Shutdown* (1934); and see authorities collated in footnote 45, page 19, *supra*.

[84] See Senate Rep. No. 628, *supra*, p. 12; Slichter, *Towards Stability* (1934), p. 150; Aldrich, Winthrop W., *The Monitor* (publication of Assoc. Industries of N. Y.), August 1936; N. Y. brief in No. 49, pp. 46, 155–156.

Moreover, such systems would be more economical than relief, would improve the organization of the free labor market, would reduce malingering and would improve the morale of the workers.[65] These conclusions of experts corresponded with the judgment of men of affairs [66] and with experience in no less than 18 foreign countries.[67]

The difficulty in adopting them was that each State, although usually sympathetic to proposals for unemployment compensation,[68] hesitated to act individually or without the encouragement of the national government for one or more of the following reasons: (1) the financial burden of the system would, unless paralleled throughout the country, handicap the competitive position of its own industries and would discourage the coming of new industries;[69] (2) it could not afford the necessary

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[65] N. Y. Brief in No. 49, pp. 120–125.

[66] *Id.*, pp. 141–145.

[67] *Id.*, pp. 170–171, 146–162; Senate Rep. No. 628, *supra*, pp. 10–11.

[68] The large number of unemployment compensation bills introduced into the New York State Legislature between 1921 and 1936 (Ibid, pp. 176–183) is typical of the local interest in inaugurating state unemployment compensation systems. Senate Rep. No. 628, *supra*, p. 11.

[69] The burden of a 3 percent pay roll tax is conservatively estimated in the N. Y. Brief in No. 49, their table 18, p. 135. In some industries, where the labor cost is high, the tax would curtail or eliminate the profits of an enterprise experiencing severe competition, a curtailed market or bad management. Standard Statistics Co., *Standard Trade and Securities Bulletin*, April 6, 1936, p. 249, May 11, 1936, p. 167. Such an effect on profits (judging from recent Federal Trade Commission and National Industrial Re-

technical advice and early administrative costs necessary to establish such a program on a sound footing;[70] (3) if it placed this new burden on its own industries it could not protect them by an embargo on goods coming from States where competitive industries were not covered by unemployment compensation;[71] (4) perhaps it could not, without permission from Congress, include in any unemployment compensation system a tax upon

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covery Administration reports) might be particularly severe in the cotton textile and coal industries, where the margin of profit in some competitive areas is very low. At any rate, it is obvious that the fear of competition of industries in other States was an important deterrent to the enactment of unemployment compensation laws. Massachusetts Special Commission on Unemployment, *Unemployment Compensation and The Minimum Wage* (1933), p. 45; Clausen, F. H., *For the Enlightenment of Those Who Have not yet Familiarized Themselves with this Dangerous Proposal* (Wisc. Mfrs. Assn., 1921); Mfrs. Assn. of Conn., *Unemployment and Its Problems* (1933) pp. 129–130; Douglas, P. H., *Social Security in the United States* (1936) p. 4; House R. No. 615, 74th Cong., 1st Sess., p. 5; Senate Rep. No. 628, *supra*, p. 11. Gov. E. W. Marland, Proceedings of the 28th Annual Conference of the Nat. Tax Assn. (1935) p. 5; Seligman, E. R. A., lecture on *The Fiscal Outlook and Coordination of Public Revenues*, in *Recent Problems in Public Finance* (1933) p. 272; Groves, H. M., lecture on *Uniformity in State and Local Taxation*, *ibid.*, p. 282. And see the recitals in state unemployment laws showing legislative recognition of the alleged competitive danger. Calif. Laws of 1935, c. 352, Art. I, Sec. 1; Mass. Gen. Laws, c. 151A, Sec. 53, as amended; Idaho Laws of 1936, c. 12, Sec. 26; Miss. Laws of 1936, c. 176, as amended by Act of Sept. 19, 1936, Sec. 2 (b).

[70] House Rep. No. 615; *supra*, p. 9.

[71] *Baldwin* v. *Seelig*, 294 U. S. 511.

employers [72] or employees [73] engaged exclusively in interstate commerce; and (5) it might not be to the narrow self-interest of its own citizens to establish any such system so long as the national government, without collecting any special tax, used its general resources to care for the unemployed within the States' borders.[74]

The situation was one in which action by the national government was urgent. Three principal methods were actually proposed:[75] (1) without imposing any special tax, the national government might transmute the relief system into unemployment compensation, and have the benefits administered either by the nation or by the States operating on a subvention plan; (2) the national government might impose an excise tax and use the proceeds for an unemployment compensation system set up either by the nation or by the States operating on a subvention plan; or (3) the national gov-

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[72] Compare *Ingels* v. *Morf*, No. 439, October Term, 1936, March 1, 1937.

[73] *Robbins* v. *Taxing District of Shelby County*, 120 U. S. 489.

[74] For many States a system of federal relief is probably a better bargain than an unemployment compensation system. Several States contribute less than 5 percent of the relief funds spent within their borders. Appendix, pages 74–75, Table 17. Since their citizens also pay a very small part of the federal internal and external revenue taxes, it is obvious that they are securing a benefit at the expense of citizens elsewhere in the Union.

[75] *Report of the President's Committee on Economic Security*, *supra*, pp. 14, 17.

ernment might impose an excise tax and, by allowing against it a credit for amounts contributed to a state unemployment compensation system, encourage the establishment of such systems.

Congress chose the third and most conservative alternative for reasons of policy and for reasons of law. So far as policy is concerned, it recognized that under the third alternative: (1) each State would be free to determine what, *if any,* system of unemployment compensation it would have; (2) the diversity of state plans would give the country the benefit of experimentation in a new field;[16] (3) local administration would promote efficiency, would encourage local persons to watch income and outgo with vigilance, and would breed responsible local leadership; and (4) a truly "federal" remedy was being applied to a problem which had become the cooperative concern of both parts of our dual government.

So far as law is concerned, Congress relied squarely on the precedent of the Federal Estate Tax, Section 301 of the Revenue Act of 1926, which Congress knew [17] had been upheld in *Florida* v. *Mellon,* 273 U. S. 12. That statute imposes a tax upon the transfer of a decedent's estate, while at the same time permitting a credit, not exceeding 80 percent for "the amount of any estate, inheritance, legacy, or succession taxes actually paid to

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[16] *Report of the President's Committee on Economic Security, supra,* p. 23.

[17] Senate Rep. No. 628, *supra,* p. 12.

any State or Territory." As we shall show in detail in the argument, the large credit there given not only has had the effect of reducing substantially the Federal revenues, but also has operated to remove the incentive for wealthy persons to move to States having no death taxes, and has induced such States to levy death taxes. That is, that tax, like this tax, effectuates several policies.

SUMMARY OF ARGUMENT

I

Title IX is a valid exercise of the power of Congress "to lay and collect Taxes * * * and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States." Constitution, Article I, Section 8, Clause 1.

This tax has the indicia of a revenue measure. Being laid upon the privilege of receiving services it is a valid excise, and, under the rule enunciated in *Florida* v. *Mellon*, 273 U. S. 12, it satisfies the constitutional canon of uniformity. It will raise substantial revenue, for even if the maximum available credits are utilized it will yield the Treasury of the United States amounts estimated to range from $22,000,000 to $90,000,000. Even if, in laying the tax, Congress acted with an eye to public policy, this Court will not on that account invalidate the tax. *Sonzinsky* v. *United States*, No. 614, October Term, 1936, March 29, 1937; *Florida* v. *Mellon*, *supra*.

If the policies of Congress in enacting this tax are to be considered, they bear a reasonable relation to the power granted in Article I, Section 8, Clause 1, since they are concerned only with the raising and spending of money for the general welfare of the United States. One policy is to make financial provision for the unemployed, thus relieving a drain which creates "unparalleled demands for relief" from the federal treasury. *West Coast Hotel Co.* v. *Parrish*, No. 293, October Term, 1936, March 29, 1937. Another policy is to mitigate double taxation. *Florida* v. *Mellon, supra.*

These policies are not only reasonably related to the power conferred by Article I, Section 8, Clause 1, but have been executed in a method specifically sanctioned by this Court. It is already established by decisions that a policy relating to the taxing and spending powers may be executed by a tax and credit. *Florida* v. *Mellon, supra.* Moreover, where the credit is made available only where the financial needs of the national government are met by the States, the tax and credit must be regarded as valid in view of the words of the Constitution, the expressions of the Framers of the Constitution (*Federalist*, Lodge ed., Nos. 36 and 45; *Farrand, Records* of the *Constitutional Convention*, Vol. 3, pp. 99–100), nineteenth century legislative precedent (Act of May 13, 1862, c. 66, 12 Stat. 384) and the plain objective of Article I, Section 8, clause 1.

II

Title IX is consistent with the Fifth Amendment. Since the proceeds are not earmarked in any way, but are commingled in the Treasury of the United States, it is unnecessary to consider the possible challenge that there is a taking of property from one class for the benefit of another.

As a result of the definitions in Section 907, the tax is not applicable in the case of employers of less than eight, agricultural labor, domestic service and other specified types of employment. Those selections, together with the 90 per cent credit and related classifications, constitute the substance of attack under the due process clause. Our answer is two-fold.

First, the Fifth Amendment does not apply to selections and there is grave doubt whether it applies to classifications in a federal taxing statute. *Flint* v. *Stone Tracy Co.*, 220 U. S. 107, 158. Although the Fifth Amendment may apply where the supposed tax is merely a confiscation of property, this Court has often recognized the broad powers of selection, and has frequently indicated the inapplicability of the Fifth Amendment to classifications. *Flint* v. *Stone Tracy Co., supra; Billings* v. *United States,* 232 U. S. 261, 282.

Second, even if the various selections and classifications are examined under the Fifth Amend-

ment, they will be found reasonable and amply justified by precedent. *Knowlton* v. *Moore,* 178 U. S. 41; *Brushaber* v. *Union Pac. R. R.,* 240 U. S. 1. The Section 907 definitions all find counterpart in similar provisions repeatedly approved by this Court. The 90 percent credit not only is founded upon the familiar policy of avoiding double taxation, but is also based upon fiscal considerations of perhaps an even more fundamental character. To the extent that taxpayers make contributions to state unemployment compensation funds, the drain upon the federal treasury for relief funds is diminished. That this fact was uppermost in the mind of Congress in permitting the 90 percent credit is apparent from an examination of the reports of both the Senate Finance Committee and the House Committee on Ways and Means.

The conditions in Section 903 (a) are designed to allow the 90 percent credit only where the state fund to which contributions have been made is a true unemployment compensation measure. Otherwise, if the state statute were merely masquerading as an unemployment compensation law, and had been enacted merely to enable local employers to take advantage of the credit or for some other foreign purpose, the federal fiscal purpose which the 90 percent credit is calculated to serve would be frustrated.

III

A. The Tenth Amendment cannot be considered in connection with the exercise of a granted power.

Ashwander v. *Tennessee Valley Authority,* 297 U. S. 288, 330; *United States* v. *California,* 297 U. S. 175; *Everard's Breweries* v. *Day,* 265 U. S. 545, 548. But if it has any application to an exercise of granted powers it does not apply here.

The tax does not in any sense constitute a penalty. It cannot be avoided by voluntary action, for whether or not the State enacts an unemployment compensation law, the taxpayer pays the same amount. It cannot be contended that the taxpayer will be "penalized" if his State enacts a law which does not meet the standards set forth in Section 903 (a). If the contention is open to petitioner, it is unsound, since federal tax laws may permit deductions which are available to persons in some States and not in others. *Crooks* v. *Harrelson,* 282 U. S. 55; *Brown* v. *Helvering,* 291 U. S. 193, 201; *New York Ins. Co.* v. *Edwards,* 271 U. S. 109. Since the taxpayer is not given the option of escaping the tax by adopting an alternative course of conduct or submitting to regulation, the *Child Labor Tax Case,* 259 U. S. 20; *Hill* v. *Wallace,* 259 U. S. 44; and *United States* v. *Constantine,* 296 U. S. 287, are not applicable.

Nor does the credit under Section 902 constitute "economic coercion" of the taxpayer. He is offered no inducement which restricts his voluntary choice; at most, the knowledge that the tax is applicable throughout the United States will remove the fear of competition which would otherwise con-

stitute his objection to the enactment of an unemployment compensation law by his own State. The case is thus entirely different from *United States* v. *Butler*, 297 U. S. 1, where the power to confer or withhold benefit payments to the individual farmer amounted to a power to coerce him into accepting a system of regulation of production.

There is, obviously, no attempt by Congress here to regulate directly the relationship of employer and employee since Congress has not established an unemployment compensation system to operate in any State. Consequently, *Carter* v. *Carter Coal Co.*, 298 U. S. 238, and *Schechter Corp.* v. *United States*, 295 U. S. 495, have no application. Nor is Congress attempting an indirect regulation of the relationship of employer and employee. The mere fact that Congress, in the exercise of a federal power, takes into account the existence of local regulatory measures does not transform these measures into national regulations. *Crooks* v. *Harrelson*, 282 U. S. 55; *Florida* v. *Mellon*, 273 U. S. 12; *Poe* v. *Seaborn*, 282 U. S. 101; *Hanover National Bank* v. *Moyses*, 186 U. S. 181; *In re Rahrer*, 140 U. S. 545; *Whitfield* v. *Ohio*, 297 U. S. 431.

B. The tax and credit do not violate the principle of the dual system of our government. That principle has never been applied to denounce action by either the States or the Federal Government by which greater cooperation between them can be secured. *Clark Distilling Co.* v. *Western*

Maryland Ry. Co., 242 U. S. 311, 331; *Whitfield* v. *Ohio*, 297 U. S. 431.

The Act is cooperative rather than coercive, and actually increases the freedom of the States. Prior to the passage of Title IX, a State, by enacting an unemployment compensation law, might seriously have prejudiced its domestic producers. This economic coercion of the commerce clause is effectively eliminated by Title IX. Compare *Kentucky Whip & Collar Co.* v. *Illinois Central R. R. Co.*, No. 138, October Term 1936, January 4, 1937. Noteworthy evidence of the lack of coercion of the federal statute is to be found in the fact that several States have refused to pass unemployment compensation laws, and in the fact that the highest courts of two States have held that they did not consider their States coerced. *Howes Brothers Co.* v. *Mass. U. C. Comm.*, (Mass. Sup. Jud. Ct., Dec. 30, 1936), 5 N. E. (2d) 720; *Gillum* v. *Johnson* (Calif. Sup. Ct.), 62 P. (2d) 1037.

The conditions contained in Section 903 (a) are merely designed to insure that the credit is allowed only in connection with a genuine unemployment compensation law. Existing State unemployment compensation laws shows a marked diversity of systems and provisions and demonstrate clearly that the States are in no way subject to Federal "dictation".

Even if the tax levied by Title IX be considered as a factor which makes it more desirable for a

State to enact an unemployment compensation law, nevertheless its validity is established by decisions of this Court. If there be any inducement, it cannot in any sense be called coercion, which is an inducement to submit to regulation as the price of escaping a crushing burden. A State which does not enact an unemployment compensation law can suffer little, if any, detriment; the tax burden on its citizens remains the same, and the relief of its unemployed will, in all probability, still be undertaken in large part by the Federal Government. The inducement is consequently no greater than that of a grant-in-aid, which this Court has expressly stated to be not coercive in *Massachusetts* v. *Mellon,* 262 U. S. 447. Moreover, since the Federal Government is enabled under its power to appropriate for the general welfare to spend money for the relief of the unemployed, it cannot be said that it has gone beyond its power if it enacts legislation inducing the States to make expenditure for this same purpose.

Finally, Title IX is supported by the direct precedent of the Estate Tax provided in Section 301 of the Revenue Act of 1926 and sustained by this Court in *Florida* v. *Mellon,* 273 U. S. 12. We submit that this decision governs the case at bar.

IV

Title III authorizes an annual appropriation of $49,000,000 "for the purpose of assisting the States in the administration of their unemployment com-

pensation laws." These subventions do not affect the validity of the tax imposed by Title IX.

A. Title III is, in fact, wholly separate from Title IX. The proceeds of the Title IX tax go into the general funds of the Treasury, unearmarked in any way. The subventions are appropriated out of general funds. They may, and have in fact, varied widely from the authorization in Title III, but even if the authorization be taken as a criterion, there is no equivalence between the proceeds of the tax and the appropriation. Indeed, as the tax proceeds *decrease* due to imposition of state taxes which may be credited against the Title IX tax, the payments under Title III, *pari passu,* increase. The case is governed by *Frothingham* v. *Mellon,* 262 U. S. 447.

Moreover, Title IX is, in law, separable from Title III. The facts do not rebut, but strengthen the presumption of separability from the separability clause. Section 1103. Title IX can operate alone, and, assuming that it had a policy of making it possible for the States to enact unemployment compensation laws, can achieve that policy independently of Title III. At most, Title III is merely cumulative. Cf. *Liggett Co.* v. *Lee,* 288 U. S. 517; *Sonzinsky* v. *United States,* No. 614, October Term, 1936, March 29, 1937.

B. In any event, Title III is valid. Certainly the maintenance by the States of unemployment compensation laws will, by some "reasonable possibility" (*United States* v. *Butler,* 297 U. S. 1, 67) conduce to the general welfare. And the form of

the present appropriation—subventions to States to pay administrative expenses under state laws—is clearly valid. Grants-in-aid to the States for a variety of purposes have been common since the first Congress, particularly in the last century—a course of legislation which is very persuasive evidence that the practice is valid. *United States* v. *Curtiss-Wright Export Corp.*, No. 98, October Term, 1936, December 21, 1936. The same answer may be given to the contention that the Federal government may not attach conditions designed to insure that the money be spent for the purposes for which it was appropriated. Reasonable conditions of this sort do not amount to regulation. *United States* v. *Butler*, 297 U. S. 1, 73.

Since Congress was empowered to make the grants under Title III it was necessarily empowered to levy a tax to raise the necessary revenue. Assuming that petitioner can establish that the tax under Title IX is related to the subvention under Title III, there is nothing unnatural or improper in relating anticipated revenues to anticipated expenditures. Such a relation is common in England, in the States and in prior acts of Congress, and has been recognized as normal by this Court. *Knights* v. *Jackson*, 260 U. S. 12, 15; *Patton* v. *Brady*, 184 U. S. 608, 620.

Nor does Section 302 (a) of Title III contain any improper delegation of legislative power. The Constitution does not require that Congress specify the details of the expenditure of public money.

The discretionary character of the power of appropriation is borne out not only by the practice in England prior to the Constitution (Stubbs, *Constitutional History,* Vol. II, pp. 523, 565–563; Civil List Act of 1782, 22 Geo. III, c. 82; 27 Geo. III, c. 33), but also by the consistent exercise by Congress of such a power under the Constitution (*e. g.,* Act of August 7, 1789, c. 9, 1 Stat. 53; Act of March 26, 1790, c. 4, 1 Stat. 104; Act of July 31, 1861, c. 28, 12 Stat. 283). In any event, the standards set forth in the challenged section are well within the prior decisions of the Court. *Hampton & Co.* v. *United States,* 276 U. S. 394; *Field* v. *Clark,* 143 U. S. 649, 692.

ARGUMENT

INTRODUCTORY

Reduced to its essentials, Title IX imposes an excise tax upon the receipt of services by an employer, but permits a deduction, not exceeding 90 percent of the tax, for amounts paid by him pursuant to a state unemployment compensation law.

We shall show (1) that the excise is a true "tax" within the power of Congress under Article I, Section 8, Clause 1; (2) that the tax does not violate the "due process" clause of the Fifth Amendment; (3) that, if a power specifically granted to Congress can be limited by the Tenth Amendment or by some analogous doctrine applicable to a dual system of government, there is no ground for invoking such limiting principles here; and (4) that, if it be assumed that the proceeds of this tax are in

part used to defray the subventions provided for in Title III, and if it be further assumed that this petitioner may question such subventions, they and this tax are nonetheless valid exercises of congressional power under Article I, Section 8, Clause 1, of the United States Constitution.

I

TITLE IX IS A VALID EXERCISE OF THE POWER CONFERRED ON CONGRESS BY UNITED STATES CONSTITUTION, ARTICLE I, SECTION 8, CLAUSE 1

Title IX is an exercise of the power of Congress "To lay and collect Taxes * * * and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States." Constitution, Article I, Section 8, Clause 1.

We shall here show that Title IX lays a true "tax": it has the indicia of a tax, it is laid upon a proper subject for an excise, it is uniform, and it produces revenue. If it is proper, which we submit it is not, to consider the policies that led Congress to enact this statute, we then show that the policies correspond both in purpose and in the method of execution with the letter and the spirit of Article I, Section 8, Clause 1.

Like all revenue measures, this statute originated in the House of Representatives.[78] Hearings were had before the House Committee on Ways

[78] The bill which was finally enacted was introduced in the House of Representatives as H. R. 7260 on April 4, 1935, 74th Cong., 1st Sess.

and Means and before the Senate Committee on Finance,[79] these being the committees generally charged with the consideration of tax statutes.[80]

Title IX on its face as well as in its operation is a true exercise of the taxing power. It imposes an excise tax on the receipt of services or on the privilege of employing individuals. That the subject is a proper one for an excise is indicated by *Sonzinsky* v. *United States,* No. 614, October Term, 1936, March 29, 1937, and the authorities collected in Appendix C. Moreover, it is clear that the excise satisfies the canon of uniformity, inasmuch as "the rule of liability is the same in all parts of the United States."[81]

The amount of the tax is proportioned to the extent that the privilege is utilized. Section 901. The Bureau of Internal Revenue under the direction of the Secretary of the Treasury is charged with the duty of collection. Section 905 (a). The administrative provisions generally found in revenue statutes relating to the filing of returns, refunds, penalties and the like are likewise present here. Section 905. The tax proceeds are paid

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[79] The House hearings (January 21 to February 12, 1935) were held on H. R. 4120, and the Senate hearings (January 22 to February 20, 1935) were held on S. 1130, both bills being predecessors of the bill finally enacted.

[80] Contrast in this respect the Agricultural Adjustment Act, which, although in form a revenue measure, was handled by the respective committees on Agriculture in the House and Senate.

[81] *Florida* v. *Mellon*, 273 U. S. 12, 17; *Poe* v. *Seaborn*, 282 U. S. 101, 117; *Knowlton* v. *Moore*, 178 U. S. 41.

into the Treasury of the United States as internal-revenue collections. Section 905 (a). Being mingled in the Treasury with other internal-revenue collections, these proceeds, unlike those considered in *United States* v. *Butler*, 297 U. S. 1, 61, are not ear-marked or related in any way to some special purpose, but are subject to any appropriation for the general support of the Government.

Further, Title IX is so constructed as to produce substantial revenue. From the outset Congress was deeply concerned with anticipated yield. Estimated receipts, without taking into account the 90 percent deduction, range from over $225,000,000 in the first year to over $900,000,000 after the Act has been in operation for a period of years.[82] Thus,

[82] The Senate Committee on Finance, recommending a tax on employers of *four* or more, estimated the yield as follows (S. Rep. No. 628, 74th Cong., 1st Sess., p. 27):

TABLE XII.—*Revenue estimates (from tax on employers of 4 or more under title IX, with no allowance for 90-percent credit)*

Calendar year with respect to which tax is levied	Fiscal year received into Treasury	Estimated receipts	Rate of tax
			Percent
1936	1937	$247,000,000	1
1937	1938	596,000,000	2
1938	1939	825,000,000	3
1939	1940	831,000,000	3
1940	1941	838,000,000	3
1942	1943	849,300,000	3
1945	1946	876,000,000	3
1960	1961	908,000,000	3

NOTE.—The tax levied by title IX is subject to a credit of 90 percent of the amount of such tax for contributions into State unemployment funds. Therefore the minimum amount of

even if the maximum credits are available to all taxpayers in all States, the minimum estimated receipts from Title IX would range from at least $22,000,000 to at least $90,000,000.

These receipts pass unrestricted into the Treasury of the United States and are available for the general support of the Government. Even if, by a *tour de force* which ignores the separable nature of the statute, expenditures under Title III are debited entirely to the funds raised by Title IX, there will still remain a substantial balance for other governmental purposes. See Point IV, pp. 122–123, *infra*.

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revenue each year from this tax will be 10 percent of the above amounts. What part of the above estimates, greater than 10 percent of same, will be retained by the Treasury is problematical, being dependent on the number of States enacting unemployment insurance laws, and the rates and coverage thereof.

The House Committee on Ways and Means, recommending a tax on employers of *ten* or more, estimated the yield as follows (H. Rep. No. 615, 74th Cong., 1st Sess., p. 15):

TABLE XI.—*Revenue estimates (from tax on employers of 10 or more under title IX, with no allowance for 90-percent credit)*

Calendar year with respect to which tax is levied	Fiscal year received into Treasury	Estimated receipts	Rate of tax
			Percent
1936	1937	$228,000,000	1
1937	1938	501,000,000	2
1938	1939	786,000,000	3
1939	1940	803,000,000	3
1940	1941	830,000,000	3
1942	1943	846,000,000	3
1945	1946	872,000,000	3
1960	1961	906,000,000	3

NOTE.—The tax levied by title IX is subject to a credit of 90 percent of the amount of such tax for contributions into State unemployment funds. Therefore the minimum amount of revenue each year from this tax will be 10 percent of the above amounts. What part of the above estimates greater than 10 percent of same, will be retained by the Treasury is problematical, being dependent on the number of States enacting unemployment insurance laws, and the rates and coverage thereof.

That Congress was concerned with such anticipated yield to be paid into the general treasury is significant, apart from any other reason that might have induced it to pass this statute. The importance of this fact is strikingly illustrated by *Nigro* v. *United States,* 276 U. S. 332, where the Court had before it the Harrison Narcotic Drug Act which it had previously declared constitutional in *United States* v. *Doremus,* 249 U. S. 86. The Court pointed out (p. 353) that the Act had been amended since the earlier decision, and that under the amended statute there had been realized approximately a million dollars a year. It adverted to the fact that, if there had previously been any doubt as to the Act being a revenue measure, that doubt had been removed by the amendment yielding such substantial revenue. *Ibid.* Certainly, the estimated receipts under Title IX are many times greater than those yields and greatly exceed the amounts realized under various other tax statutes,[33] including Section 2 of the National Firearms Act which yielded to the Treasury only $5,400 in 1934 and $4,400 in 1935. *Sonzinsky* v. *United States,* No. 614, October Term, 1936, March 29, 1937, footnote 1.

But the petitioner suggests that though a levy bears all the earmarks of a tax, and does in fact

[33] The Annual Report of the Commissioner of Internal Revenue for the Fiscal Year Ended June 30, 1935 (pp. 56–67), and Internal Revenue Collections, Fiscal Year 1936,

raise revenue, it is not an exercise of the power vested in Congress by Article I, Section 8, Clause 1, if Congress, in laying the levy, had in mind not merely revenue but also another policy. To this suggestion a host of cases, culminating in *Sonzinsky* v. *United States*, No. 614, October Term, 1936, March 29, 1937, furnish a decisive answer. The true rule, so recently stated, is that:

> Inquiry into the hidden motives which may move Congress to exercise a power constitutionally conferred upon it is beyond the competency of courts. *Veazie Bank* v. *Fenno, supra; McCray* v. *United States, supra,* 56–59; *United States* v. *Doremus, supra,* 93–94; see *Magnano Co.* v. *Hamilton,* 292 U. S. 40, 44, 45; cf. *Arizona* v. *California,* 283 U. S. 423, 455; *Smith* v. *Kansas City Title Co.,* 255 U. S. 180, 210; *Weber* v. *Freed,* 239 U. S. 325, 329–330; *Fletcher* v. *Peck,* 6 Cranch 87, 130. They will not undertake, by collateral

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Preliminary Statement (pp. 26–37) disclose the following collections:

	1935	1936
Adulterated butter	$3,992.55	$4,664.11
Filled cheese	1,003.58	148.40
Oleomargarine	2,048,976.50	2,203,804.01
Mixed flour	4,525.98	5,582.59
Future delivery	3,950,544.00	2,943,542.37
Playing cards	4,351,299.40	4,143,698.44
Matches	6,000,101.30	6,885,811.92
Furs	2,675,731.07	3,221,057.14
Jewelry	2,010,122.98	3,110,604.75
Firearms	2,143,007.67	2,494,574.54
Cameras and lenses	343,387.66	577,925.70
Chewing gum	757,182.50	807,279.40

> inquiry as to the measure of the regulatory effect of a tax, to ascribe to Congress an attempt, under the guise of taxation, to exercise another power denied by the Federal Constitution. *McCray* v. *United States, supra;* cf. *Magnano Co.* v. *Hamilton, supra,* 45.

Of the cases cited in this quotation, and the others referred to in the margin,[84] *Florida* v. *Mellon* and *United States* v. *Doremus* sufficiently illustrate the principle that the Federal Government may tax with an eye to broad public policy.[85] In the statute considered in the former case, the Congress provided a tax on the transmission of estates, but allowed a deduction up to 80 percent for amounts paid under state death tax laws. This statute, as its legislative history[86] no less than its structure, reveals, was enacted less with an eye to increasing revenue than to encouraging States to impose local estate and succession taxes. In the *Doremus* case Congress laid a tax on persons dealing with opium, but exempted those who, in addition to having registered with federal authorities, *had procured a*

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[84] *Florida* v. *Mellon*, 273 U. S. 12; *Alexander Theatre Ticket Office* v. *United States*, 23 F. (2d) 44 (C. C. A. 2d); *McKenna* v. *Anderson*, 31 F. (2d) 1016 (C. C. A. 2d), certiorari denied, 279 U. S. 869; *Apollo Operating Corp.* v. *Anderson*, 55 F. (2d) 66 (C. C. A. 2d); *United States* v. *Adams*, 11 Fed. Supp. 216 (S. D. Fla.). See also Story, *Commentaries on the Constitution* (5th ed.), Vol. 1, § 965.

[85] See the same rule applied to state taxation in *Fox* v. *Standard Oil Co.*, 294 U. S. 87, 100.

[86] See footnote 13, p. 118, *infra.*

state license to practice medicine. Thus the levy not only took a general public policy into account, but depended for its incidence on state regulation which in no sense related to a power vested in Congress.

If, contrary to the rule enunciated in these cases, this Court were to consider the various policies which Congress had in mind when it enacted Title IX of the Social Security Act, we submit that the policies are reasonably related to the specific power conferred by Article I, Section 8, Clause 1 since they are concerned only with the raising and spending of money for the general welfare of the United States.

The policy of the clause is clearly stated in the Constitution. The power given to Congress is a power to tax "to provide for the general Welfare of the United States." Or, as this Court has said, the power "granted is the power to tax for the purpose of providing funds for payment of the nation's debts and making provision for the general welfare." *United States* v. *Butler,* 297 U. S. 1, 64.

Before examining the policies involved in the statute at bar, we pause to make explicit the narrow interpretation of these quotations which will serve to support our argument. We understand that the Constitution and this Court have sanctioned a tax which provides *funds* for the general welfare. Beyond this we do not need to go. We do not need to assert, and we do not here assert,

that Congress has the power to formulate any substantive regulations which may, in a loose or popular sense, be regarded as "for the general welfare", and then attach to such regulations penalties in the guise of taxes or rewards in the guise of credits. Compare *The Child Labor Tax Case,* 259 U. S. 20; *United States* v. *Butler,* 297 U. S. 1, 64; *Carter* v. *Carter Coal Co.,* 298 U. S. 238, 292. We make only this point, that if the policies of a tax are to be considered, the policies here involved relate to providing *funds* for the general welfare.

In the first place, the policy of the tax and credit is to remove obstacles which have prevented States from enacting their own unemployment compensation laws, and to encourage them to take such action.[87] The enactment of such state laws will make financial provision which, in view of the economic data already presented, is plainly financial provision for the general welfare of the United States. We have shown that when the unemployed are without funds, "the individual health, safety and

[87] It will be recalled that under Section 902 a credit against the Title IX tax "shall be allowed only for contributions made under the laws of States certified for the taxable year as provided in Section 903." And Section 903 (a) (4) limits a certification to cases in which the state law provides that all contributions "shall be used solely in the payment of compensation," that is, in "cash benefits payable to individuals with respect to their unemployment." Section 907 (g). In short, these statutory clauses make it clear that the credit, taken together with the state law, is designed to provide funds for unemployed persons. See also the Senate Committee report quoted at length in footnote 97a, p. 69, *infra.*

welfare are sacrificed or neglected", and from these individual disasters, the nation suffers since "the whole is no greater than the sum of all its parts". *Holden* v. *Hardy,* 169 U. S. 366, 397, quoted with approval in *West Coast Hotel Co.* v. *Parrish* No. 293, October Term, 1936, March 29, 1937. Moreover, we have shown that in our present economy, when States neglect to make timely provision for the unemployed, a drain such as we have already experienced *upon the national treasury is correspondingly increased.* The unemployed workers cannot be left to starve. Their misfortune "casts a direct burden for their support on the community". *Ibid.* As this Court stated in the *Parrish* case:

> What these workers lose in wages the taxpayers are called upon to pay. The bare cost of living must be met. We may take judicial notice of the unparalleled demands for relief which arose during the recent period of depression and still continue to an alarming extent despite the degree of economic recovery which has been achieved. It is unnecessary to cite official statistics to establish what is of common knowledge through the length and breadth of the land.

In the second place, the policy of the tax and credit minimize what is, in effect, double taxation. In a State that has an unemployment compensation law, the State is already requiring the taxpayer to make financial contribution for the general welfare. It seems most unjust to impose a substantial

additional burden on him, particularly when the burden is to furnish revenue which, like other revenue, will be used by the nation less in his State than in States which have neglected to make timely provisions for the unemployed. The avoidance of double taxation has always been regarded as a policy peculiarly appropriate to the purposes of the congressional taxing power.

Even before the Constitution was ratified by the requisite number of States, double taxation was an object of deep concern. Hamilton recognized that the two governments might effectuate "an improper accumulation of taxes on the same object," but he "hoped and presumed, however, that mutual interest would dictate a concert in this respect which would avoid any material inconvenience." *Federalist* (Lodge ed.) No. 33, p. 194. See also No. 32, pp. 188–189; No. 36, p. 211. And Edmund Randolph, in discussing in the Virginia Convention the question of the power of taxation enjoyed by both nation and State, said that "It will most certainly be the interest of either to avoid imposing a tax on an article, which shall have been previously taxed by the other." Remarks of Edmund Randolph in the Virginia Convention, June 7, 1788, Farrand, *Records of the Federal Convention,* Vol. 3, p. 309.

Moreover, the more equitable distribution of tax burdens through the avoidance of double taxation, long a matter of legislative solicitude, has justified many classifications in tax statutes.

Again, on this point, *Florida* v. *Mellon*, 273 U. S. 12, is an authority. Other examples are collected in the margin.[88]

Continuing on the assumption that this Court, in reviewing a tax statute, will examine the congressional policies, we next turn to the issue whether, if the policies here involved are related to the specific power conferred by Article I, Section 8, Clause 1, they have been executed in accordance with one of the ways in which that clause was intended to operate.

The petitioner may contend that the policies cannot be carried out by means of a credit. This issue, we think, is settled in this Court. Congress can carry out its policy by a credit against, or exemption from, a tax, just as it can by the tax itself. This is shown by a host of precedents, including *Florida* v. *Mellon, supra; Brushaber* v. *Union Pacific R. R.*, 240 U. S. 1; *Flint* v. *Stone*

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[88] Revenue Act of 1936, Secs. 23 (c), 26 (b), 31 and 131; Revenue Act of 1934, c. 277, 48 Stat. 680, Secs. 23 (c), 31, 102 (h) and 131. Report of the House Committee on Ways and Means on Double Taxation (1933). See also those cases in which it has been held that the avoidance of double taxation furnishes a proper basis for a classification in a state tax law. *Kidd* v. *Alabama*, 188 U. S. 730; *Travellers' Ins. Co.* v. *Connecticut*, 185 U. S. 364; *Darnell* v. *Indiana*, 226 U. S. 390, 398; *Watson* v. *State Comptroller*, 254 U. S. 122, 124–125; *Klein* v. *Board of Tax Supervisors*, 282 U. S. 19; *Lawrence* v. *State Tax Commission*, 286 U. S. 276, 284; *Liggett Co.* v. *Lee*, 288 U. S. 517, 533; *Colgate* v. *Harvey*, 296 U. S. 404, 419–422; *State Board* v. *Young's Market Co.*, 299 U. S. 59, 64; *Henneford* v. *Silas Mason Co.*, No. 418, October Term, 1936, March 29, 1937.

Tracy, 220 U. S. 107; *Spreckels Sugar Refining Co.* v. *McClain*, 192 U. S. 397; and *Knowlton* v. *Moore*, 178 U. S. 41. And the available credit or exemption can be a very substantial one: in *Florida* v. *Mellon*, it was 80 per cent; in the *Spreckels* case, it was $250,000.

Moreover, quite apart from these adjudged cases, and as an alternative, we submit that a statute which lays a tax and allows a credit to taxpayers in States that provide funds for the general welfare is a valid exercise of the power conferred in Article I, Section 8, Clause 1. The clause on its face merely requires that the power be so exercised as to "provide [funds] for the general welfare." See page 47, *supra*. The Constitution does not stipulate who shall make the provision or under whose rules the funds shall be either collected or applied. This Court has already, in *Massachusetts* v. *Mellon*, 262 U. S. 447, refused to read into the Constitution a stipulation that the *application* of the funds must be by the nation, and not by the States. And the contemporaneous exposition of the Constitution by the Framers, the precedents of nineteenth century legislation, and the objective of the constitutional power here involved, show that there should not be read into the Constitution a stipulation that the *collection* of funds must be by the nation, and not by the States.

The Federalist papers of Hamilton (*Federalist*, Lodge ed., No. 36, pp. 211, 212) and Madison (*Id.*, No. 45, p. 290) and the joint report of Roger Sher-

man and Oliver Ellsworth to the Governor of Connecticut, dated September 26, 1787 (Farrand, *supra,* Vol. 3, pp. 99–100), make it appear that the Framers contemplated that three methods would be available to provide funds for the general welfare of the United States: (1) taxation entirely prescribed by Congress and entirely collected by federal officers [this system is almost universally followed today]; (2) taxation prescribed by Congress, but collected by state officers acting either as federal agents or under the regulations of the States [this system was apparently never followed, although it was considered in the debates of the first Congress. 1 *Annals of Congress* 367, May 18, 1789] and (3) taxation prescribed by Congress with an option to the States to secure for themselves and their citizens tax exemption or tax remission where they make their own financial provision "for the general welfare of the United States."

Title IX may be regarded as falling within this third class. This statute remits in part the exercise of the federal power to collect taxes in a State that has provided its financial quota for the general welfare of the United States. In the words of Sherman and Ellsworth, Congress has provided that its collecting "authority need not be exercised, if each state will furnish its quota." Farrand, *supra,* Vol. 3, p. 100. Or, as Hamilton said, "When the States know that the Union can apply itself without their agency, it will be a powerful motive

for exertion on their part." *Federalist*, No. 36, p. 211.

A method corresponding in principle with the one here employed was evolved in connection with direct taxes imposed by Congress in the nineteenth century.[*] During the Civil War period, Congress imposed direct taxes under which the States were given the right to assume the tax and receive a credit for prompt payment. Act of Aug. 5, 1861, c. 49, 12 Stat. 292, and Act of May 13, 1862, c. 66, 12 Stat. 384. It is interesting to note that when the first of these two taxes was under consideration in the House of Representatives, Representative Roscoe Conkling of New York offered (and, ex-

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[*] The first direct tax was laid by the Act of July 14, 1798, c. 75, 1 Stat. 597. Although it had been suggested that the States themselves assume and pay the quota imposed upon their citizens, this suggestion was rejected in view of the unsatisfactory experience with that procedure under the Articles of Confederation. *Report of Oliver Wolcott, Jr., Secretary of the Treasury, to the House of Representatives, Dec. 14, 1796*, American State Papers, Finance, Vol. 1, pp. 414, 436.

Direct taxes thereafter fell into disuse until the War of 1812. Then in the direct tax acts of August 2, 1813, c. 37, 3 Stat. 53; January 9, 1815, c. 21, 3 Stat. 164; and March 5, 1816, c. 24, 3 Stat. 255, Congress permitted the States to assume and pay the amounts apportioned them, and, indeed, allowed to each State a deduction of 15 per cent if it made the payment promptly. 3 Stat. 71, 179, 256. Seven States took advantage of this method of payment in 1814; and four took advantage in 1815 and 1816. Adams, Henry Carter, *Taxation in the United States, 1789–1816*, page 68.

cept for administrative reasons presented by the Treasury, would probably have carried) a proposal to allow the same sort of assumption by the States of federal *excise* taxes due from their citizens.[80] What is even more interesting, and for purposes of this case extremely significant, is that, from this 1862 tax, which, like the present tax, was upon individuals (*United States* v. *Louisiana*, 123 U. S. 32, 38), Congress provided that there should be deducted as a credit all amounts incurred by States "in enrolling, subsisting, clothing, supplying, arming, equipping, paying and transporting its troops employed in aiding to suppress the present insurrection against the United States." 12 Stat. 384. This deduction, like the present credit, was given for amounts collected and expended by a State "to provide for the common defence and general welfare of the United States", and redounded to the benefit, presumably *pro rata*, of individual citizens. Every State in the Union except Delaware indicated that it would take advantage of the right to assume and pay its quota of the direct tax,[81] and the following States paid all or most of their direct tax by application of claims against the United States for expenses in connec-

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[80] *Congressional Globe*, 37th Cong., 1st Sess., p. 247, col. 1; Smith, Harry Edwin, *United States Federal Internal Revenue Tax History from 1861 to 1871*, p. 71.

[81] Senate Ex. Doc. No. 24, 46th Cong., 1st Sess. (1879) p. 13.

tion with the troops they sent to the federal army: New Hampshire (see New Hampshire Laws, 1862, p. 2639), New York (see New York Senate Ex. Doc., 1863, No. 4, pp. 7–10), Pennsylvania (see Pennsylvania Laws, 1862, p. 18), West Virginia (see Act of June 21, 1866, c. 128, 14 Stat. 68), Michigan (see Michigan Laws, 1862, pp. 1–2), Wisconsin (see Wisconsin Laws, 1862, p. 127), Indiana (see Indiana Laws, 1865, p. 47), Maine (see Maine Acts and Resolves, 1862, p. 173), Missouri (see Act of April 17, 1866, c. 46, 14 Stat. 39). These facts were reported to Congress.[92] Moreover, although the credit was never judicially passed upon, this Court apparently did regard the assumption by the States of the direct taxes owed by their citizens as authorized by the Constitution. *United States* v. *Louisiana*, 123 U. S. 32, 38.[93]

[92] In his annual report on finances sent to Congress on December 10, 1863, Secretary of the Treasury Chase stated that direct tax receipts were estimated at $11,620,717, and that this amount, or nearly this amount, had been received in the form of payments for military supplies and services by the States, for which they were entitled to credit beyond their several proportions of the tax. He said, however, that in consequence of incomplete settlements, only the sum of $1,485,103 appeared on the books as received into the Treasury. Annual Report on Finances of the Secretary of the Treasury, December 10, 1863, 38th Cong., 1st Sess., House Executive Documents, Vol. 6, No. 3.

[93] "It allows, it is true, the different States to assume the amounts apportioned to them respectively, and to collect the same in their own way by their own officers. Many of the States did thus assume the amounts, and in such cases it may well be considered that for the sums assumed they be-

The use of a tax credit where a State serves to relieve a drain on the national Treasury was indeed known and approved even before the Constitution.[94]

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came debtors to the United States, and, so far as any portion of those sums has not been paid, that they still remain debtors. But, unless such assumption was had, no liability attached to any State in her political and corporate character. The liability was upon the individual land owners within her limits." 123 U. S. 32, 38.

[94] On September 4, 1782, it was resolved by the Continental Congress that a quota of $1,200,000 be imposed on the States and that the money so raised in each State should be applied for the payment of interest due on certificates issued from the loan office of such State and other liquidated debts of the *United States* contracted therein before any part thereof should be paid into the public treasury. It was further recommended to the several States that certain specified taxes be imposed by them, consisting of a tax on land, a poll tax, and an excise on liquors, and that *they* appropriate the money to arise therefrom to the payment of the debts of the United States. It was ordered that these resolutions be referred to the Grand Committee to assess and report the quota of each State. Journals of the Continental Congress, Vol. 23, 1782, pp. 545–546. On September 10, 1782, the Grand Committee reported the apportionment, which was confirmed. *Id.*, pp. 564–571.

These resolutions were referred to in a report on April 5, 1784 (Journals of the Continental Congress, Vol. 24, 1784, pp. 185–196) by a grand committee including, among others, Thomas Jefferson and Roger Sherman. The committee there said with regard to the 1782 resolutions (p. 188):

> This requisition gave license to the States, to apply so much as should be necessary of their respective quotas of it to the payment of interest due on Certificates issued from the Loan office of their own states, and other liquidated debts of the United States contracted therein. Hence they suppose it has happened, that the actual payment of these quotas, have been uncommunicated to the Office of finance for the United States.

We thus see that it is not a novel idea for Congress to exercise its power to collect taxes in a manner that recognizes the cooperative role played by a State that has taken financial steps "to provide for the common defence and general welfare of the United States." Where a State itself directly raises and applies funds for the common defence and general welfare of the United States, thereby relieving *pro tanto* the Federal Treasury, Congress has in the past recognized the equitable claim of the State and its citizens to reduction of their tax burden. Such reduction clearly bears a reasonable relation to the taxing power and cannot be said to rob the tax of its constitutional character or to convert it into an attempted exercise of some other power not granted to Congress.

Even if there were not these two alternative bases of precedent, one based on the tax and credit upheld in *Florida* v. *Mellon,* and the other based on the direct tax of 1862, we submit that approval of this tax is required by a realistic interpretation of Article I, Section 8, Clause 1, of the Constitution. The objective or end of the clause is to make financial provision for the general welfare. It would be almost absurdly unrealistic to advance the novel principle of constitutional law that, though the national government may, out of its general revenue spend either directly or indirectly by grants to the States, for relief, it cannot by a tax and credit avoid a repetition of the present situation,

which is so perilous to the finances of the nation and which involves a central administration inevitably more complex, and often less efficient, than local administration. To such unrealism, the answer is "that to a constitutional end many ways are open." *Carter* v. *Carter Coal Co.*, 298 U. S. 238, 291.

II

THE TAX IMPOSED BY TITLE IX DOES NOT CONTRAVENE THE FIFTH AMENDMENT

It is only in rare and exceptional circumstances that the Fifth Amendment operates as a limitation upon the taxing power (*Magnano Co.* v. *Hamilton*, 292 U. S. 40, 44), and then only if the challenged statute be so arbitrary or capricious as to compel the conclusion that it does not involve an exercise of the taxing power at all but constitutes a confiscation of property. *Helvering* v. *City Bank Co.*, 296 U. S. 85, 90; *Nichols* v. *Coolidge*, 274 U. S. 531.

The asserted absence of due process here arises primarily from two contentions: First, that property is arbitrarily taken from one class and given to another; and, second, that various selections and classifications in the Act are arbitrary.

A. There is no taking of property from one class for the benefit of another

It may be argued that the tax operates to take property from one class and bestow it upon another in violation of the Fifth Amendment.

Such contention, however, would be based upon an assumption of fact which is wholly false, namely, that the tax proceeds are paid out to the employees as unemployment compensation. Wholly unlike the contributions involved in *Railroad Retirement Board* v. *Alton Railroad Co.*, 295 U. S. 330, no portion of the taxes collected under Title IX is made available in any form to employees. All unemployment insurance benefits to employees are paid out of local funds, no part of which ever consisted either directly or indirectly of Federal money. There is therefore no need to consider whether such expenditures would result in a violation of due process if paid out of the funds raised by this tax.

The only possible Federal expenditures under the Social Security Act that relate even remotely to unemployment insurance are authorized by Title III. There, Congress merely authorized appropriations, relatively small in amount, for state *administration* expenses. And, as we will later show in Point IV, *infra,* not only is the validity of Title IX wholly independent of Title III, but also the appropriations authorized in Title III are in any event proper.

B. The various selections and classifications do not violate the Fifth Amendment

By virtue of the definitions contained in Section 907, the tax is not applicable in the case of employ-

ers of less than eight individuals, agricultural labor, domestic service, seamen, government service, employment by certain relatives, and employment by charitable and like organizations. These *selections* as well as the classification permitting the 90 percent credit and certain related classifications may perhaps be attacked as arbitrary and therefore violative of the due process clause.

While, as indicated above, it is clear that the due process clause may strike down a purported exercise of the taxing power where the statute amounts to a confiscation of property, the Fifth Amendment has never been thought to apply where Congress has merely *selected* the subjects for taxation, and there is grave doubt whether it applies to mere classifications in tax statutes.

As to selections in a Federal tax statute, it is clear that the taxing power would be crippled if an excise could be defeated merely by showing that Congress in imposing a tax on certain acts or privileges had failed to include certain other similar acts or privileges. To implement the taxing power, Congress must have plenary powers of *selection*. The Court was particularly directing its attention to this question when it said in *Flint* v. *Stone Tracy Co.*, 220 U. S. 107, 158:

> In levying excise taxes the most ample authority has been recognized from the beginning to select some and omit other possible subjects of taxation, to select one call-

> ing and omit another, to tax one class of property and to forbear to tax another.
> * * *

Cf. *Sonzinsky* v. *United States,* No. 614, October Term, 1936, decided March 29, 1937.

That the Fifth Amendment does not apply in the case of *selections* is made clear by the many occasions on which the Court has approved the selection of specific subjects for Federal taxation without requiring the taxation of similar subjects. See *Flint* v. *Stone Tracy Co., supra,* at 159. Striking, indeed, is the stamp tax imposed upon "calls" but not upon "puts." *Treat* v. *White,* 181 U. S. 264. See also *Brushaber* v. *Union Pac. R. R.,* 240 U. S. 1. We submit, therefore, that the selections occasioned by the definitions in Section 907 of the Act should not be open to judicial scrutiny under the Fifth Amendment.

There is also grave doubt whether the Fifth Amendment applies to the classification resulting from the 90 percent credit and the conditions imposed by Section 903 (a). Classifications in *state* legislation are, of course, subject to the Fourteenth Amendment. But the Fourteenth Amendment, unlike the Fifth Amendment, contains, in addition to the due process clause, the *equal protection* clause. This Court, in considering the question of classification under the Fourteenth Amendment, has uniformly related that issue to the equal protection clause rather than to the due process clause. See, for example, *Colgate* v.

Harvey, 296 U. S. 404, 419–422. It is true that the two clauses may, within certain limits, be coextensive, but it is also true that the equal protection clause has an independent sphere of action. It is within that independent sphere that the classification questions fall. Such, no doubt, must have been the analysis of this Court when it declared through Mr. Justice Holmes in *La Belle Iron Works* v. *United States,* 256 U. S. 377, 392:

> The Fifth Amendment has no equal protection clause; and the only rule of uniformity prescribed with respect to duties, imposts, and excises laid by Congress is the territorial uniformity required by Art. I, § 8 * * *.

See also *Quong Wing* v. *Kirkendall,* 223 U. S. 59, 62. Indeed, the Court has often stated that no Fifth Amendment question is involved. *Treat* v. *White,* 181 U. S. 264, 269; *McCray* v. *United States,* 195 U. S. 27, 61; *Billings* v. *United States,* 232 U. S. 261, 282; *Brushaber* v. *Union Pac. R. R.,* 240 U. S. 1, 23–24; *Barclay & Co.* v. *Edwards,* 267 U. S. 442, 450–451.

However, even if the selections and classifications involved herein are examined under the Fifth Amendment, they will be found reasonable and amply justified by precedent.

1. The selections arising from the Section 907 definitions are reasonable

The exemption of employment by States is, of course, merely declaratory of their implied constitutional immunity from Federal taxation. Cf.

Plummer v. *Coler*, 178 U. S. 115, 118. In exempting employment by the United States, Congress simply avoided the useless procedure of self taxation.

Exemptions of charitable organizations, agricultural labor, domestic service, seamen and service within the family are of a type long familiar in our internal-revenue laws. *Flint* v. *Stone Tracy Co.*, 220 U. S. 107; *Knowlton* v. *Moore*, 178 U. S. 41; *Brushaber* v. *Union Pac. R. R.*, 240 U. S. 1; *Bromley* v. *McCaughn*, 280 U. S. 124; *New York Trust Co.* v. *Eisner*, 256 U. S. 345. Comparable exemptions by state legislatures have been attacked and uniformly sustained under the Fourteenth Amendment. *Middleton* v. *Texas Power & Light Co.*, 249 U. S. 152, 159; *Aero Transit Co.* v. *Georgia Comm'n*, 295 U. S. 285, 291; *Utah Power & L. Co.* v. *Pfost*, 286 U. S. 165; *Citizens' Telephone Co.* v. *Fuller*, 229 U. S. 322; *Magoun* v. *Illinois Trust & Savings Bank*, 170 U. S. 283; *Billings* v. *Illinois*, 188 U. S. 97; *Keeney* v. *New York*, 222 U. S. 525; *Northwestern Life Ins. Co.* v. *Wisconsin*, 247 U. S. 132; *American Sugar Refining Co.* v. *Louisiana*, 179 U. S. 89.

Moreover these selections may be justified by the prohibitive practical administrative difficulties in such cases. Cf. H. Rep. No. 615, 74th Cong., 1st Sess., p. 33, and S. Rep. No. 628, 74th Cong., 1st Sess., p. 45, dealing with the similar exemptions to the tax levied by Title VIII of the Act. The

difficulties in requiring the maintenance of proper records by housewives and farmers, and the almost impossible task of properly enforcing the Act as to them, give adequate basis for distinction. The expense of collection might well far exceed the revenue to be obtained. In the case of officers and members of the crew of vessels engaged in the foreign or coasting trade, administrative obstacles would be encountered in segregating the services performed within and without the United States. Considerations of administrative difficulties such as these have often been held to afford a proper basis for classification. *Hatch* v. *Reardon,* 204 U. S. 152; *Continental Baking Co.* v. *Woodring,* 286 U. S. 352; *La Belle Iron Works* v. *United States,* 256 U. S. 377; *Aero Transit Co.* v. *Georgia Comm'n,* 295 U. S. 285.

The fact that the exemption of small employers is fixed numerically at eight in no way operates against the validity of the classification. Congress might distinguish between large employers and small employers on the ground of administrative convenience, or for the recognized reason that large employers have a higher percentage of unemployment, and so create a greater drain on the Federal Treasury.[95] This Court has held in like situations that it is within the discretion of the legislature to designate the number which will constitute the

[95] The following table, the result of a thoroughgoing nation-wide study of all industries, depicts the effects of the

dividing line. *Jeffrey Mfg. Co.* v. *Blagg*, 235 U. S. 571; *Quong Wing* v. *Kirkendall*, 223 U. S. 59; *St. Louis Cons. Coal Co.* v. *Illinois*, 185 U. S. 203; *Middleton* v. *Texas Power & Light Co.*, 249 U. S. 152, 159; *Miller* v. *Strahl*, 239 U. S. 426, 434; *McLean* v. *Arkansas*, 211 U. S. 539, 551; *Booth* v. *Indiana*, 237 U. S. 391, 397. Cf. *Brushaber* v. *Union Pac. R. R.*, 240 U. S. 1; *Knowlton* v. *Moore*, 178 U. S. 41; *Spreckels Sugar Refining Co.* v. *McClain*, 192 U. S. 397; *Bromley* v. *McCaughn*, 280 U. S. 124.

The selections arising out of Section 907 are, therefore, in no way arbitrary or capricious. They

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1920–21 depression, and gives ample foundation for a distinction between large and small firms:

A comparison of the volume of employment per week at the peak and in the trough for leading industrial groups (1920–1921 depression)

Employees per concern	Full Time Hours (Millions)			Hours Actually Worked (Millions)		
	Peak	Trough	Percent Decline	Peak	Trough	Percent Decline
0-20	7.106	6.892	3.00	6.956	6.742	3.08
21-100	3.122	2.640	15.71	2.928	2.521	13.84
Over 100	9.215	6.997	24.07	9.181	6.589	28.23

King, *Employment Hours and Earnings in Prosperity and Depression, United States 1920–1922*, p. 60. Results of an inquiry conducted by the National Bureau of Economic Research with the help of the Bureau of Markets and Crop Estimates and the Bureau of the Census for the President's Conference on Unemployment.) The difference between the Full Time Hours and Hours Actually Worked represents the amount of work gained through overtime, or lost through part-time work.

are of the type repeatedly sustained, and should be approved here.

2. The 90 percent credit

While the most that the due process clause can require of a classification in a tax statute is that it be reasonable—and the reasonable basis for the classification may be founded on policies entirely unrelated to the production of revenue [96]—we have

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[96] For example, charitable corporations pay no income taxes. See, *e. g.*, Revenue Act of 1936, Sec. 101; Revenue Act of 1934, Sec. 101, c. 277, 48 Stat. 680. And, within certain limits, gifts to charity are deductible under the income, estate and gift tax laws. See, *e. g.*, Revenue Act of 1936, Sec. 23 (o), (q); Revenue Act of 1935, Sec. 102 (c), amending Sec. 23 of the Revenue Act of 1934, *supra*. Such exemptions, it is plain, are based upon broad social aims, entirely unrelated to revenue measures as such.

Similarly, the exemption of yachts of domestic construction in the tax on the use of yachts was predicated upon a similar policy of encouraging shipbuilding in this country. See *Billings* v. *United States*, 232 U. S. 261. Again, the differences in rate of tax on colored and uncolored oleomargarine were not founded on fiscal policy. See *McCray* v. *United States*, 195 U. S. 27.

Revenue acts frequently grant exemptions to certain classes in a way that is justified only by a general sense of fairness. Thus the $3,000 exemption to unmarried persons and the $4,000 credit to married persons did not invalidate the Revenue Act of 1913 (c. 16, 38 Stat. 166). *Brushaber* v. *Union Pac. R. R.*, 240 U. S. 1. The $40,000 exemption as to insurance under the estate tax law does not affect its validity. *Chase National Bank* v. *United States*, 278 U. S. 327.

Many other revenue statutes containing classifications wholly unrelated to Federal taxation have received judicial

already shown that the 90 percent credit is predicated upon two predominantly fiscal policies.

1. The first justification for the 90 percent credit may be found in the general policy of reducing double taxation. (See pages 49–51, *supra.*) If no such credit were allowed, an employer in a State having an unemployment insurance measure would have to pay twice, once to the state fund and then to the Federal Government. Such a result not only would impose a disproportionate financial burden upon such employers, but also would subject them to a business disadvantage in competition with other employers.[97]

2. In addition, the 90 per cent credit may be justified under the fiscal powers in another and perhaps more significant manner. To the extent that em-

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approval. Thus a statute taxing sales made at commodity exchanges but not elsewhere has been upheld. *Nicol* v. *Ames*, 173 U. S. 509. A stamp tax upon "calls" but not upon "puts" has been sustained. *Treat* v. *White*, 181 U. S. 264. Allowances for depreciation have been permitted while denied as to depletion in connection with an income-tax statute. *Von Baumbach* v. *Sargent Land Co.*, 242 U. S. 503. A striking classification has been sustained between corporations obtaining funds by issuing bonds and those issuing stock. *Anderson* v. *Forty-Two Broadway Co.*, 239 U. S. 69. An income-tax statute permitting depletion allowances but limiting such allowances to 5 percent of the gross output has been upheld. *Stanton* v. *Baltic Mining Co.*, 240 U. S. 103.

[97] See Message of the President recommending Legislation on Economic Security, January 17, 1935, H. Doc. No. 81, 74th Cong., 1st Sess., p. 3; Senate Report No. 628, 74th Cong., 1st Sess., p. 13.

ployers make contributions to state funds, the Federal Government makes substantial financial gains, for the operation of these funds will result in a reduction of relief expenditures of the Treasury. In recent years these expenditures have been enormous, and in future years, unless provision is made, they may continue to be large. See pp. 22–24, *supra*.[97a]

In short, the amounts not paid as a tax, but credited against it serve a very real Federal *fiscal* purpose.[98]

[97a] Congress was very much aware of the *fiscal* purposes that would be served by the credit. The report of the Senate Committee on Finance declares (S. Rep. No. 628, pp. 15–16): "This country has expended far more for unemployment relief during this depression than the total expenditures of all other countries that have unemployment compensation systems during the entire time these systems were in operation. Unemployment compensation will not completely eliminate the necessity for unemployment relief. To the extent, however, that unemployment reserves are accumulated, they will reduce the necessity for relief. In normal periods, unemployment compensation will provide a sufficient safeguard for most of the unemployment that will occur, and in depression periods, will very materially reduce the burden of relief costs. * * *" See also H. Rep. No. 615, *supra*, p. 16.

[98] The custom of giving a deduction from taxes to those whose conduct serves a Federal purpose is as old as the Congress itself. The very first Congress, presumably actuated by a desire to avoid the expense of building a large navy, and a desire to stimulate citizens to build or to purchase ships, provided that "a discount of ten percent on all the duties imposed by this [tariff] act, shall be allowed on such goods, wares and merchandises, as shall be imported in

3. The conditions in Section 903 (a)

In order that a taxpayer may avail himself of the 90 percent credit offered in Section 902, it is necessary that the state law under which he has made his contribution shall comply with certain minimum criteria contained in Section 903 (a). Those criteria (most of them merely definitional in character) are valid classifications not only because they are reasonable, but also because they were designed to advance the fiscal policy of the Federal Government.

Moreover, the conditions are clearly separable from the remainder of the statute. The intention of Congress that the various provisions of the Act should be separable is plainly stated in Section 1103. And unless clear evidence of structural inseparability should appear to overcome the prima facie meaning of the language of Congress, such legislative intention must be given effect. See *Carter* v. *Carter Coal Co.*, 298 U. S. 238, 312–313; *Williams* v. *Standard Oil Co.*, 278 U. S. 235, 241. This Court has often refused to strike down a statute merely because of the invalidity of conditions therein, where such conditions do not go to the heart of the statute, and are subordinate in charac-

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vessels built in the United States, and which shall be wholly the property of a citizen or citizens thereof, or in vessels built in foreign countries, and on the sixteenth day of May last, wholly the property of a citizen or citizens of the United States, and so continuing until the time of importation." Section 5 of Act of July 4, 1789, c. 2, 1 Stat. 24.

ter. See *Utah Power & L. Co.* v. *Pfost,* 286 U. S. 165, 185; *Huntington* v. *Worthen,* 120 U. S. 97, 102; *Highland Farms Dairy, Inc.* v. *Agnew,* No. 573, October Term, 1936, March 29, 1937. *Cf. Tiernan* v. *Rinker,* 102 U. S. 123; *National Life Ins. Co.* v. *United States,* 277 U. S. 508; *United States* v. *Chicago, etc. R. Co.,* 282 U. S. 311. The instant case is much stronger, for the very theory that might operate to invalidate these conditions—namely, that they are wholly unrelated to unemployment compensation—would establish their secondary character, and thus render them separable. And, finally, the presumption of separability of secondary conditions operates even more strongly in the case of a revenue measure of general application. See *Field* v. *Clark,* 143 U. S. 649, 696–697.

Section 903 (a) is divided into six clauses, of which five (clauses 1, 2, 4, 5 and 6) are closely related. Clause (3) is related to the Federal fiscal powers in a somewhat different way and will be discussed separately.

A. Clauses (1), (2), (4), (5), and (6) of Section 903 (A)

We have shown above that the 90 per cent credit constitutes a reasonable classification, since the necessity of Federal expenditures for unemployment relief is diminished by the operation of state unemployment compensation laws. In allowing that credit it is essential, therefore, to make certain that the state law under which the taxpayer makes

his contribution is a genuine and workable unemployment insurance measure. For, if the state statute were merely masquerading as an unemployment compensation law and had been enacted only to enable the taxpayer to take advantage of the credit or for some other foreign purpose, the Federal fiscal policies which the 90 percent credit is calculated to serve would be frustrated. Accordingly, clauses (1), (2), (4), (5) and (6) of Section 903 (a), merely set up a series of five tests to determine whether the state unemployment compensation law is genuine and workable.

Briefly stated, an unemployment compensation law is a law which provides for the accumulation of reserves for the payment of benefits to involuntarily unemployed persons. Each of the provisions listed in Section 903 (a) (with the possible exception of Clause (3), which will be discussed later) will be found, upon analysis, to constitute an element necessary in showing that the law in question is a proper and workable enactment designed to serve the purpose mentioned, and not some other or different purpose. Accordingly, since they represent merely definitional criteria of what is a true unemployment compensation measure, they are proper classifications, reasonable in character and related to the federal fiscal power.

First.—Obviously, the first step in any unemployment compensation plan is that the funds must be provided. Because of the impossibility of foresee-

ing future developments in the labor market and the thorough unpredictability of general business activity, the burden of unemployment compensation and the extent of the drain upon an unemployment fund will vary greatly from year to year. In order to assure the solvent operation of the law for a reasonable period, it is therefore essential that a reasonable reserve be accumulated in the fund before compensation becomes payable.[99]

Thus Section 903 (a) (2), which provides that no compensation shall be payable until two years after contributions begin to accrue, merely embodies the first essential of an unemployment compensation plan, namely, that a fund be accumulated.

Second.—When a fund has been accumulated, the most fundamental element of an unemployment compensation plan must be that the money be used for the purpose of paying benefits to unemployed individuals, and not for some other or totally different purpose. Clause (4) of Section 903 (a) supplies this vital criterion by providing that all money in the state unemployment fund shall be used solely in the payment of unemployment compensation.

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[99] Experience abroad has shown that solvent operation cannot be accomplished unless a reserve is accumulated at the outset by commencing the collection of contributions a considerable time before the payment of compensation begins. See Hansen, Murray, Stevenson, and Steward, *A Program for Unemployment Insurance and Relief in the United States* (1934), pp. 74–75.

Third.—Equally fundamental in the theory of unemployment compensation is the necessity that compensation be paid, not to the merely idle or shiftless, but only to the unemployed—i. e., to persons who are willing and able to take work, but not able to find it. There is only one objective test for determining whether a man is willing to work, and that is to offer him a job and see whether he takes it. For this reason the agency through which unemployment compensation is paid must be coordinated with an agency which is in a position to determine what work is available and to offer such work to applicants for benefits. At some point prior to the actual payment of compensation, contact between the claimant and such an agency is essential. Consequently Clause (1) of Section 903 (a) provides that "compensation is to be paid through public employment offices in the State or such other agencies as the Board may approve." It does not require that compensation be paid *at* the employment office. The actual payment might be made at any office or by any means the State sees fit. On the other hand, agencies other than public employment offices might be able to test a claimant's genuine involuntary unemployment by offering him work. In order that the use of such agencies might not be precluded to the States, the Social Security Board is authorized to approve such other agencies.

Fourth.—Incidental to testing the genuineness of claimant's involuntary unemployment by offer-

ing him a new job is some workable standard for determining the suitability of the new job offered. Manifestly benefits should not be denied to a man who refuses unsuitable work, if he is otherwise eligible. A law without a standard for determining the suitability of the new work offered could not constitute a genuine unemployment compensation law. And since the number of claims will be large but the amount of compensation that will be payable to each individual claimant will be comparatively small, an unemployment compensation law would not constitute a workable law unless the standards of suitability governing the new work offered were self-evident and comparatively automatic in their operation.

The only simple objective test, which depends upon external evidence rather than an exercise of individual judgment, and which, for many years, has been used as a standard in government contracts, is that the wages, hours, and other conditions shall not be substantially less favorable than those prevailing for similar work in the locality at the time. Clause (5) of Section 903 (a) contains this condition. In addition, under the same clause, the state law must provide that benefits shall not be denied to an otherwise eligible individual for refusing to accept work in connection with which he would be compelled to engage in strike-breaking activities or to sign a yellow-dog contract. The purpose of these latter provisions (which are dis-

cussed in more detail *infra,* pp. 111–112) is to assure that, at least in the respects indicated, a state unemployment compensation law shall be confined to its proper purpose, and shall not be used as a labor relations act or as an instrument of labor policy. A State might include any number of other standards. The inclusion of these minimum standards in the state law in no way precludes the worker from accepting the new work offered. Such standards merely provide a workable objective test for determining the conditions under which an otherwise eligible claimant of compensation may refuse to accept the job offered to him without disqualifying himself from receiving compensation.

Fifth.—Finally, the last essential attribute of an unemployment compensation law is that in order to be workable over any period of time it be subject to modification. Experience in other countries in unemployment compensation has demonstrated conclusively that it is a very difficult legislative task to create an unemployment compensation system which is practicable in all of its details, and which is responsive to economic changes. This experience, together with the lack of adequate statistical information in this country and the fact that unemployment compensation is a comparatively new undertaking here, indicates the absolute need for the provision that there must be no finality in the initial legislation enacted. Clause (6) of Section 903 (a). The fifth attribute of an unemploy-

ment compensation law is simply that its flexibility be preserved, so as to permit change in the particular provisions of the law.

Thus, the provisions enumerated in Section 903 (a) merely serve as a definition or description of an unemployment compensation law. They enumerate the distinguishing qualities which differentiate such a law from a law for a different or other purpose. Since they thus operate to insure the existence of a *bona fide* state unemployment compensation measure, they are reasonable provisions, related to the federal fiscal powers by reducing substantially the necessity for federal expenditures. As such they constitute reasonable classification complying fully with the requirement of due process in the Fifth Amendment.

B. Clause (3) of Section 903 (A)

The provision, embodied in Section 903 (a) (3), that amounts paid to a state unemployment fund shall not be credited unless "'all money received in the unemployment fund shall immediately upon such receipt be paid over to the Secretary of the Treasury to the credit of the Unemployment Trust Fund established by section 904'' stands on a footing somewhat different from the other provisions in Section 903 (a).

It is not entirely different, to be sure. This provision, in common with the other provisions, is designed to make certain that no credit is given unless the law adopted by the State is workable and

will in fact relieve the drain on the federal treasury. The provision is designed to avoid the danger that the state system will break down because the funds raised are not invested with due regard to safety and liquidity. Unemployment funds are peculiarly subject to the possibility of losses even when invested carefully, for they must be built up during periods of prosperity and high prices, and liquidated during times of business recessions, when prices of securities have fallen. This difficulty is avoided by clause (3).

But Section 903 (a) (3) represents something more than the other provisions, for it involves direct participation by the Federal Government in one aspect of the state law. Read together with Section 904, this section in effect provides that credit will be given for payments only under such state laws as stipulate that the funds collected must be invested in certain types of United States bonds. So stated it is obvious that this provision does not involve an arbitrary exercise of the federal power. In one sense, *it is offering a bounty to those who create a market for government securities.*

Section 903 (a) (3), however, is primarily designed to enable the Federal Government to continue its effective regulation of the amount and flow of credit. *Norman* v. *B. & O. R. Co.*, 294 U. S. 240, 303; *Juilliard* v. *Greenman*, 110 U. S. 421; *McCulloch* v. *Maryland*, 4 Wheat. 316. The accumulation of unemployment compensation funds

under the uncoordinated managements of the respective States and their investment in miscellaneous securities would obstruct federal regulation of credit and lessen federal protection of the market for government bonds. Under these circumstances, Congress has power to adopt such measures as are reasonably necessary to the execution of its expressly delegated powers.

It has been estimated that had an unemployment compensation law or laws been in effect in the United States during the years 1922 to 1929, under which contributions at the rate of three percent on payrolls were required, between $2,000,000,000 and $2,500,000,000 would have been accumulated and been in the fund or funds in 1929 (Report of the Committee on Economic Security (1935), 74th Cong., 1st Sess., page 14).

Irrespective of the manner in which such a substantial sum had been invested, its investment and sudden liquidation during a major depression period might have substantial effects upon the entire monetary system. If invested in government bonds, their appearance in large blocks on the market at a time of financial crisis might seriously impair the efforts of the government to borrow money and might hamper the efforts of the Federal Reserve System to control the credit situation. The Federal Reserve System would probably absorb the government bonds, but their volume might well be so large as to interfere seriously with the

policy of its Open Market Committee of buying government bonds to mitigate deflationary tendencies during the period of business recession.

The withdrawal from commercial and savings banks of these large sums would encroach substantially upon the total quantity of bank credit available during a business recession. If invested in state, municipal, or private securities, the liquidation of such securities at the very time that the securities market was at its lowest point would increase deflationary tendencies and might further impair the operations of the Open Market Committee of the Federal Reserve System. If hoarded in cash the withdrawal from circulation of so substantial a part of the basic money supply would have disastrous effects and might wholly nullify the Federal Reserve System as a measure to control the credit system.

The considerations which influenced Congress to create the Trust Fund were summarized by the Committee on Ways and Means of the House of Representatives as follows:[1]

> This last provision will not only afford maximum safety for these funds but is very essential to insure that they will operate to promote the stability of business rather than

[1] H. Rep. No. 615, 74th Cong., 1st Sess., p. 9. A similar statement appears in the report of the Committee on Finance of the Senate. S. Rep. No. 628, 74th Cong., 1st Sess., pp. 14–15.

the reverse. Unemployment reserve funds have the peculiarity that the demands upon them fluctuate considerably, being heaviest when business slackens. If, in such times, the securities in which these funds are invested are thrown upon the market for liquidation, the net effect is likely to be increased deflation. Such a result is avoided in this bill through the provision that all reserve funds are to be held by the United States Treasury, to be invested and liquidated by the Secretary of the Treasury in a manner calculated to promote business stability. When business conditions are such that investment in securities purchased on the open market is unwise, the Secretary of the Treasury may issue special nonnegotiable obligations exclusively to the unemployment trust fund. When a reverse situation exists and heavy drains are made upon the fund for payment of unemployment benefits, the Treasury does not have to dispose of the securities belonging to the fund in open market but may assume them itself. With such a method of handling the reserve funds, it is believed that this bill will solve the problem often raised in discussions of unemployment compensation, regarding the possibility of transferring purchasing power from boom periods to depression periods. It will in fact operate to sustain purchasing power at the onset of a depression without having any counteracting deflationary tendencies.

If the measures adopted by the Congress for the execution of its expressly delegated powers bear a reasonable relation to that end and are not arbitrary or capricious, the decisions of the Congress as to the degree of the necessity for such measures, and the choice of the measures to be adopted, are not subject to judicial review. The mere possibility of the results described above constitutes a reasonable basis for the Congressional determination that the maintenance of such separate funds might impair or obstruct the power of the Federal Government to borrow money, the regulation by the Federal Government of the value of money and of the flow of credit, and the execution by the Federal Government of its monetary and other powers.

The choice of the means of avoiding such interference, so long as such means are not arbitrary or capricious, is within the exclusive domain of Congress. The fact that other means might have been adopted is immaterial. See *Norman* v. *B. & O. R. Co.*, 294 U. S. 240, 311; *Stafford* v. *Wallace*, 258 U. S. 495, 521; *McCulloch* v. *Maryland*, 4 Wheat. 316, 421, 423.

Thus, in addition to being a reasonable essential of a workable state unemployment compensation law, the condition requiring the deposit of state-collected contributions in the Unemployment Trust Fund is independently justified as an exercise of the power of Congress to protect the finances and credit of the United States.

III

THE TAX AND CREDIT ARE NOT IN VIOLATION OF THE TENTH AMENDMENT AND ARE CONSISTENT WITH THE PRINCIPLE OF THE DUAL SYSTEM OF OUR GOVERNMENT

Petitioner asserts that even though Title IX be an exercise of the taxing power conferred by Section 8 of Article I of the Constitution, nevertheless it is invalid for two reasons. First, it contends that the tax coerces *individual* action, and thereby effectuates federal regulation of matters not within the power of Congress in violation of the Tenth Amendment. Second, it urges that the tax, by coercing *state* action, violates the fundamental principle that government under the Constitution is dual—that the States must continue to exist and function in certain fields without interference by the Federal Government. We believe that these arguments, severally or in conjunction, are wholly inadequate to sustain petitioner's burden of showing the invalidity of Title IX.

A. The tax and credit do not violate the Tenth Amendment.

Petitioner urges that the tax and credit here involved effectuate the federal regulation of matters not within the power of Congress by resorting to penalties and economic coercion on individuals in violation of the Tenth Amendment. In our opinion it is improper and unnecessary to consider the Tenth Amendment, which does not apply where

Congress acts under a granted power. *Ashwander* v. *Tennessee Valley Authority*, 297 U. S. 288, 330; *United States* v. *California*, 297 U. S. 175; *McCulloch* v. *Maryland*, 4 Wheat. 316, 406. As this Court said in *Everard's Breweries* v. *Day*, 265 U. S. 545, 548:

> And if the Act is within the power confided to Congress, the Tenth Amendment, by its very terms, has no application, since it only reserves to the states "powers not delegated to the United States by the Constitution."

But, if the Tenth Amendment has any application to exercises of granted powers, it does not apply here.

1. There are no penalties

The tax has on its face none of the invidious elements associated with a penal law. It must be paid by every taxpayer regardless of his mental attitude. It can never be entirely escaped. This tax cannot be reduced by submission to regulation; a reduction is possible only if a sovereign State enacts an unemployment compensation law, and the taxpayer as a result thereof undergoes a corresponding financial detriment. It does not supplement or perform the function of a state criminal or regulatory law. It is never exorbitant. It is not arbitrary in amount, but varies in direct proportion to the extent that the taxable privilege is utilized.

Nor can it rightly be said that, though the form lacks a penal aspect, the substantial effect is to

threaten the taxpayer with a penalty unless the State in which he carries on business enacts a particular type of unemployment compensation law. Clearly, the taxpayer is not penalized if his State fails to enact any unemployment compensation law whatsoever. Under those circumstances he pays no more than does his competitor in a neighboring State which has such a law. He pays to the federal collector of taxes the full amount due under Section 901 of the Social Security Act; while his competitor, as a result of the credit provided in Section 902, pays the same total but divides it so that part of it goes to the federal collector and part to the state agency collecting unemployment contributions.

But it is further said that the taxpayer will be "penalized" if his State should later enact an unemployment compensation law which does not meet the standards set forth in Section 903 (a). He then would be paying more than his competitor in a neighboring State that has a statute complying with that section. If this argument were sound, it would not be open to the petitioner in the case at bar, for it has not been subjected to, nor is it now threatened by the enactment of, a state law which does not meet the standards of Section 903 (a). One who would strike down a statute as unconstitutional must show that the alleged unconstitutional feature injures him. *Premier-Pabst Sales Co.* v. *Grosscup,* 298 U. S. 226; *Hatch* v.

Reardon, 204 U. S. 152, 160, 161; *Massachusetts* v. *Mellon,* 262 U. S. 447; *Virginian Railway* v. *System Federation,* No. 324, October Term 1936, March 29, 1937.

But in any event the argument is unsound. In a number of comparable cases this Court has, without special comment, applied federal tax laws under which deductions were available to persons in some States and not in others. Thus the federal estate tax law formerly required the inclusion of a decedent's real estate in the gross estate only if, under state law, it could be sold to pay expenses of administration. *Crooks* v. *Harrelson,* 282 U. S. 55; *Continental Illinois Bank & Trust Co.* v. *United States,* 65 F. (2d) 506 (C. C. A. 7th), certiorari denied, 290 U. S. 663. Again, the federal income tax on life insurance corporations allowed deductions for reserve funds only if such reserves were required under state laws. *Brown* v. *Helvering,* 291 U. S. 193, 201; *New York Ins. Co.* v. *Edwards,* 271 U. S. 109. And compare *Florida* v. *Mellon,* 273 U. S. 12; *Poe* v. *Seaborn,* 282 U. S. 101; *Rouse* v. *United States,* 65 C. Cls. 749, certiorari denied, 278 U. S. 638.

The foregoing analysis shows that the tax does not fall within the principle that the petitioners derive from the *Child Labor Tax Case,* 259 U. S. 20; *Hill* v. *Wallace,* 259 U. S. 44; and *United States* v. *Constantine,* 296 U. S. 287. This is plain from a statement of each of these cases.

In the *Child Labor Tax Case* the Court declared unconstitutional a statute imposing an annual excise equivalent to 10 per cent of the entire net profits of any person operating (1) a mine or quarry in which children under the age of 16 years were employed during any portion of the taxable year; or (2) any mill, cannery, or factory in which children under the age of 14 years were employed or where children between the ages of 14 and 16 years had been permitted to work more than 8 hours in any day or more than 6 days in any week, or after 7 p. m. or before 6 a. m. during any portion of the taxable year. Exemption from liability was allowed where the employer reasonably believed the employee to be above the specified age, relying upon a certificate of age issued by a certain board or where the incidence of the tax depended upon the employment of a child under a mistake of fact as to its age and where there was no intention to evade the tax.

Such a statute differs fundamentally from Title IX of the Social Security Act. An essential distinction is that the Child Labor Tax Law offered the taxpayer an opportunity to avoid any out-of-pocket expense if he followed a detailed and specific course of *business* conduct prescribed by the *Federal* Government; whereas Title IX offers a taxpayer virtually no opportunity to avoid out-of-pocket expenses, and allows him to divide such expenses only to the extent he is subjected to *fiscal*

demands by a *State* Government. Moreover, the Child Labor Tax Law, unlike Title IX, imposed a tax that was not designed to raise revenue, that depended on *scienter*,[2] that was extremely onerous, and that was not proportioned to the extent to which any privilege was utilized.[3] Title IX merely adapts federal fiscal legislation to a particular type of state fiscal legislation, without penalizing those who are or those who are not subject to such state fiscal measures.

In *Hill* v. *Wallace, supra,* the Court held unconstitutional the Future Trading Act which imposed a prohibitive "tax" upon dealings in grain futures, but exempted transactions on Boards of Trade designated as "contract markets" by the Secretary of Agriculture. Submission to a complex system of regulation was necessary before a Board of Trade could be so designated.

It is plain that the Future Trading Act resembles the Child Labor Tax law, and is essentially different from Title IX of the Social Security Act. Like the Child Labor Tax, but unlike Title IX, the Future Trading Act offered the taxpayer an op-

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[2] Under the Child Labor Tax law, if the employer did not know that he was departing from the standards of child labor prescribed by the Federal Government, he did not need to pay the tax.

[3] Under the Child Labor Tax law, the 10 percent tax on the net profits for the entire year was payable if but one person under the prescribed age was knowingly employed for one day.

portunity to avoid any out-of-pocket expense if the exchanges on which he dealt followed a detailed and specific course of *business* conduct prescribed by the *Federal* Government. The effect of the Future Trading Act was to extend the field of federal control and to penalize those who did not cooperate in effectuating this result. The effect of Title IX is not to enlarge the ambit of federal regulation, nor is it to penalize those who do not follow, or induce others to follow, any particular course of conduct. Indeed, Title IX does not take account even of conduct prescribed under state law, except fiscal conduct of the type which has consistently been taken into account in federal revenue legislation.

The statute considered in *United States* v. *Constantine, supra,* imposed, in addition to the $25 excise laid on retail liquor dealers by Section 3244, Revised Statutes, a "special excise tax" of $1,000 on such dealers carrying on their business in any State contrary to the laws of such State. In holding this special excise unconstitutional, the Court emphasized (296 U. S. 287, 295) that—

> The condition of the imposition is the commission of a crime. This, together with the amount of the tax, is again significant of penal and prohibitory intent rather than the gathering of revenue.

The circumstances in the *Constantine* case were entirely different from those surrounding the tax involved in the case at bar. Here no endeavor is

made to penalize unlawful conduct, to discourage employment or to add sanctions for violations of State laws.

2. There is no "economic coercion" on individuals

Petitioner next urges that even though the tax here involved cannot be called a penalty, it is none the less invalid because the credit offered by Section 902 is utilized to exert economic coercion on individuals to bring them within a federal regulatory scheme which Congress is powerless to command. The argument is based on the premise that there are, by virtue of the Tenth Amendment, limits to the broad discretion allowed Congress in the granting of deductions similar to those which have been imposed on the congressional spending power by *United States* v. *Butler*, 297 U. S. 1. This is a wholly novel doctrine, not only unsupported by any direct authority but also contrary to a long-established practice of Congress in tax statutes. However, assuming that the Tenth Amendment might limit some credits, we believe that it does not apply to the credits offered by Title IX, and that the *Butler* case is clearly distinguishable.

Upon analysis of the Act, it is clear that the taxpayer is offered no inducement which restricts his voluntary choice. If he lives in a State which has no unemployment compensation law he is not offered a reward if his State does pass such a law. He is merely told that some of the money which he would otherwise be required to pay to the Fed-

eral Government he will then be allowed to pay to his State. His out-of-pocket expenses remain roughly the same. Of course, the knowledge of the tax and the available deductions may remove an important objection that he would otherwise have to a local unemployment compensation law, namely, the fear that such a law would impose on him a burden for which his competitor in a sister State had no rough equivalent. This new freedom from competition, however, is negative in character. The taxpayer, like the States (see p. 101 *et seq., infra*) is merely enabled under the Act to favor or oppose unemployment compensation on its merits, free from the fear of devastating competition.

But it is argued that the act restricts the free choice of a taxpayer who is undecided whether to favor the enactment of an unemployment compensation law which meets the description in Section 903 (a) or one which does not. Actually his choice is not truly fettered. We have pointed out above (pp. 71–77, *supra*), that the provisions of that section are solely definitional, and do not affect the major issues in such a law which the citizens of each State may resolve in their own way. Section 903 (a) is not a limitation, but a provision by which Congress could insure that the credits against the federal tax were payments made under a *bona fide* State unemployment compensation law.

Thus it appears that the situation at bar is entirely different from that in the *Butler* case. In the Agricultural Adjustment Act excises were levied upon processors of cotton, and the proceeds, or amounts equivalent thereto, were used by the Government to offer substantial benefit payments to cotton farmers who executed contracts by which the Federal Government directly regulated the production on their individual farms. The Court held that the taxes were invalid because the proceeds were used to coerce farmers to accept regulatory contracts by which Congress purchased compliance that it was powerless to command. It was not the mere expenditure of federal money which the Court found coercive, but the form of the offer and the form of the regulation. First, the Court pointed out that the competitive situation was such that cotton farmers had no genuine option but were forced to accept the regulatory scheme outlined. Mr. Justice Roberts said (297 U. S. 1, 70–71):

> The regulation is not in fact voluntary. The farmer, of course, may refuse to comply, but the price of such refusal is the loss of benefits. *The amount offered is intended to be sufficient to exert pressure on him to agree to the proposed regulation.* The power to confer or withhold unlimited benefits is the power to coerce or destroy. If the cotton grower elects not to accept the benefits, he will receive less for his crops; those who receive payments will be able to

undersell him. *The result may well be financial ruin.* [Italics added.]

Then the Court noted that the Government gave the money not upon conditions, but only upon *contracts* which gave the Government actual legal control of the farmer's production. In a significant passage (297 U. S. 1, 73), Mr. Justice Roberts recognized that the firm commitment and legal sanctions involved in a contract exercised coercion, whereas the loose inducement involved in a conditional gift might not:

> We are not here concerned with a conditional appropriation of money, nor with a provision that if certain conditions are not complied with the appropriation shall no longer be available. By the Agricultural Adjustment Act the amount of the tax is appropriated to be expended only in payment under contracts whereby the parties bind themselves to regulation by the Federal Government. *There is an obvious difference between a statute stating the conditions upon which moneys shall be expended and one effective only upon assumption of a contractual obligation to submit to a regulation which otherwise could not be enforced.* [Italics added.]

Finally, the Court observed that the regulations effected by the proceeds of the taxes was direct federal regulation. Under the contract the State did not regulate; the regulation was federal and the State could not object, "declare the contract void

and thus prevent those under the state's jurisdiction from complying with its terms." 297 U. S. 74.

None of these coercive factors exists with respect to the tax credit offered by Section 902. There is no competitive or other situation which makes the proffered credit an irresistible financial inducement or, indeed, a financial inducement of any sort. The Federal Government asks for no contract or other tie which firmly commits any person or any State to any course of conduct. And whatever regulation may eventually occur will be state regulation, which a State is free to favor or to oppose; to inaugurate or prevent.

It is noteworthy that under the Agricultural Adjustment Act the Federal Government retained control of the object for which the expenditure was made after the disbursement of Federal money had been completed. Thus the disbursement became a mere instrument of control of local matters. *Here the conditions on which the credit is allowed are directed solely at insuring that it shall be given only for the object for which it is to be allowed, viz., payments under a genuine unemployment compensation law.* Thus, if the conditions be considered as regulatory in nature, they constitute regulation only to the extent of insuring that the credit granted is utilized for the intended purpose. They are, in other words, identical with conditions on the disbursement of money which are designed to insure that the money reaches the intended recipi-

ents. Once the conditions have been fulfilled, the credit continues automatically and no Federal control whatever is exercised.

3. Title IX is not a means for effectuating the Federal regulation of matters not within the powers of Congress

Petitioner may assert that even if Title IX does not involve penalties or coercion, it violates the Tenth Amendment because it endeavors to effectuate the federal regulation of matters not within the powers of Congress. It is said that under this Title Congress is either regulating directly the local relationship of employer and employee, or is dictating the form of a state regulation of the local relationship of employer and employee.

A. Under Title IX Congress Does Not Directly Regulate the Relationship of Employer and Employee

The first half of this charge is so plainly unfounded that it requires only brief attention. Under the Social Security Act, Congress is not regulating the local relationship of employer and employee. Neither in that nor any other statute[4] has Congress established an unemployment compensation system to operate in any State. If an unemployment compensation system is established in a particular State, the regulation of employer

[4] Congress has established an unemployment compensation system for the District of Columbia. Act of Aug. 28, 1935, c. 794, 49 Stat. 946. This system, however, is strictly limited to an employment the greater part of which is performed within the District of Columbia. Sec. 1 (b).

and employee thereby accomplished will be by state law, not by federal law. It will be the State, not the United States, which will tell employers and employees how much they shall contribute, if at all. It will be the State, not the United States, which will tell the unemployed which of them shall be paid benefits, when they shall receive these benefits, and how much the benefits shall be.[8] Even in these minor respects where the state law conforms to the descriptive features of Section 903 (a), discussed at pp. 71–77, *supra,* the regulation both in form and

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[8] The House Report, Report No. 615, p. 8, emphasizes the point that "The bill permits the States wide discretion with respect to the unemployment compensation laws they may wish to enact." And Senate Report No. 628 is equally emphatic. It is there noted that (pp. 12, 13):

"This bill does not set up a Federal unemployment compensation system. What it seeks to do is merely to make it possible for the States to establish unemployment compensation systems and to stimulate them to do so.

* * * * *

"Except for a few standards which are necessary to render certain that the State unemployment compensation laws are genuine unemployment compensation acts and not merely relief measures, the States are left free to set up any unemployment compensation system they wish, without dictation from Washington. The States may or may not add employee contributions to those required from the employers. Of the 5 States which have thus far enacted unemployment compensation laws, 2 require employee contributions, and 3 do not. Likewise, the States may determine their own compensation rates, waiting periods, and maximum duration of benefits. Such latitude is very essential because the rate of unemployment varies greatly in different States, being twice as great in some States as in others."

in substance will be state regulation, which the United States does not command, and which is accomplished by state law operating *ex proprio vigore.*

Thus the situation is entirely different from that in the cases upon which petitioner relies. In each of them the regulation was both in form and in substance directly federal. In the Bituminous Coal Conservation Act considered in *Carter* v. *Carter Coal Co.,* 298 U. S. 238, the hours, wages and other working conditions in the bituminous coal industry were regulated under a federal code. In the live poultry code under the National Industrial Recovery Act, reviewed in *Schechter Corp.* v. *United States,* 295 U. S. 495, the fair trade practices and working conditions in the live poultry industry were subjected to federal regulations. The contracts made pursuant to the Agricultural Adjustment Act, considered in *United States* v. *Butler,* 297 U. S. 1, set up a system whereby the Federal Government directly controlled the individual farmer's production. The Municipal Bankruptcy Act, invalidated in *Ashton* v. *Cameron County Water Dist.,* 298 U. S. 513, resulted in making state instrumentalities directly subject to the supervision of federal courts.

B. Under Title IX Congress Does Not Indirectly Regulate the Relationship of Employer and Employee

Petitioner, however, says that the distinction we draw between the Bituminous Coal Act, the National Industrial Recovery Act, the Agricultural

Adjustment Act, and the Municipal Bankruptcy Act, on the one hand, and Title IX of the Social Security Act, on the other hand, is a distinction of form and not of substance. It says that here the regulation of employer and employee may in form be accomplished by state laws, but none the less is in substance federal regulation.

But the mere fact that Congress in the exercise of a federal power takes into account the existence of local regulatory measures does not transform these measures into national regulations. It is a commonplace that in exercising its taxing and other powers, Congress frequently takes into account the burden and nature of local regulation. Thus the federal estate tax laws have taken into account local rules regarding the extent to which a decedent's real estate is subjected by local law to administration expenses, *Crooks* v. *Harrelson,* 282 U. S. 55, and local laws regarding succession taxes, *Florida* v. *Mellon,* 273 U. S. 12; the federal income tax laws have taken into account local rules regarding community property, *Poe* v. *Seaborn,* 282 U. S. 101, and local laws regarding fraudulent conveyances, *Phillips* v. *Commissioner,* 283 U. S. 589, 602; the federal bankruptcy laws have for many years allowed exemptions on the basis of local regulatory legislation, *Hanover National Bank* v. *Moyses,* 186 U. S. 181; cf. *Wright* v. *Vinton Branch of the Mountain Trust Bank of Roanoke,*

No. 530, October Term, 1936, March 29, 1937; and the federal power to regulate commerce has been so exercised as to take into account local liquor regulations, *In re Rahrer,* 140 U. S. 545; *Clark Distilling Co.* v. *Western Maryland Ry. Co.,* 242 U. S. 311, and local labor regulations, *Whitfield* v. *Ohio,* 297 U. S. 431.

In taking state laws into account, as cases like *Crooks* v. *Harrelson, Florida* v. *Mellon,* and *Poe* v. *Seaborn, supra,* show, the Federal Government is not in any sense dictating regulations. One might as well assert that Congress regulates marriage when it allows a greater deduction from income tax to one who has been married than to another who has not, Revenue Act of 1934, c. 277, 48 Stat. 680, Sec. 25 (b) (1); or that Congress regulated corporations when, while exempting enterprises conducted as a partnership, it taxed similar enterprises conducted under corporate franchises granted by state law. *Flint* v. *Stone Tracy Co.,* 220 U. S. 107, 158. To draw such distinctions on the basis of state regulations is not to regulate but to *classify.* See pages 67, 71–77, *supra.*

And the classification here is no more meticulous and detailed and no more coercive or regulatory than in the cases cited. Congress has merely taxed those who are subject to a genuine state unemployment compensation law differently from those who are not. The provisions of Section 903 (a) can properly be construed in no other way.

B. The tax and credit do not constitute a violation of the principle of the dual system of Government

We have shown that there is no substance to the assertion that the tax and credit here involved constitute a violation of the Tenth Amendment, since Congress has not attempted either directly or indirectly to impose a system of regulation of local relationships within the States. There remains to be considered the charge that the tax and credit constitute a violation of the fundamental principle of the dual nature of our system of federal and state governments. We submit that the tax and credit do not violate this principle, that no burden is laid on the States and that there is no coercion on them to adopt a course of action in a field reserved to them by the Constitution, and that the method here adopted has been expressly sanctioned by this Court.

The principle of the indestructible nature of our dual system of government finds clear expression in *Collector* v. *Day*, 11 Wall. 113, 124:

> The general government, and the States, although both exist within the same territorial limits, are separate and distinct sovereignties, acting separately and independently of each other, within their respective spheres. The former in its appropriate sphere is supreme; but the States within the limits of their powers not granted, or, in the language of the tenth amendment, "re-

> served", are as independent of the general government as that government within its sphere is independent of the States.

Hence it follows that a federal tax on essential governmental functions of a State must of necessity be invalid.

However, the principle has never been applied to denounce action either by the States or by the Federal Government through which greater cooperation between them can be secured. Abundant examples might be drawn from many varied fields of state and federal action, particularly with respect to grants by the Federal Government in aid of various activities of the States (see pp. 130–135, *infra*). The Webb-Kenyon Act, which involves cooperation under the commerce clause, is a striking illustration. By that Act (Act of March 1, 1913, c. 90, 37 Stat. 699) Congress prohibited the shipment in interstate commerce of liquor which was to be sold or used in violation of any state law. This Court, sustaining the Act in *Clark Distilling Co.* v. *Western Maryland Ry. Co.*, 242 U. S. 311, clearly pointed out that any argument was fallacious which required the conclusion (p. 331)—

> that because Congress in adopting a regulation had considered the nature and character of our dual system of government, State and Nation, and instead of absolutely prohibiting, had so conformed its regulation as to produce cooperation between the local and national forces of government to the end

> of preserving the rights of all, it had thereby transcended the complete and perfect power of regulation conferred by the Constitution.

Cf. In re Rahrer, 140 U. S. 545; *Rhodes* v. *Iowa,* 170 U. S. 412; *Whitfield* v. *Ohio,* 297 U. S. 431; *Hanover National Bank* v. *Moyses,* 186 U. S. 181; *Poe* v. *Seaborn,* 282 U. S. 101.

It is the position of the Government that the tax here falls within the latter, rather than the former, category—that it is cooperative rather than coercive. Freedom of action by the States is not limited by Title IX. On the contrary, it is actually increased.

1. The tax levied by title IX increases, rather than decreases, the freedom of State action.

Prior to the passage of Title IX of the Social Security Act, a State, by enacting an unemployment compensation law, might seriously have prejudiced its domestic producers by causing them to lose their outside as well as their home markets to outside competition. Not only were the States powerless to act with reference to their outside markets, but, by reason of the commerce clause, it was impossible for them to act, either individually or collectively, to prevent the importation of goods from other States, the producers of which had borne no unemployment compensation expense. *Baldwin* v. *Seelig,* 294 U. S. 511. Economic conditions, in other words, blocked *in limine* the States' freedom to evaluate the merits or demerits

of unemployment compensation.[6] See footnote 69, page 25, *supra.*

This restrictive factor—the economic coercion of the commerce clause—is effectively eliminated by the Social Security Act. Employers in every State are subject to a uniform federal tax, and no additional financial burden need be imposed on them by passage of a State unemployment law which meets the requirements of section 903, because the amount of the state contribution can be credited up to 90 percent of the amount of the federal tax.[7] A State

[6] This situation was commented upon by both the Finance Committee of the Senate and the Ways and Means Committee of the House in reporting the Social Security Act. The report of the former states (S. Rep. No. 628, 74th Cong., 1st Sess., p. 16):

"Unemployment compensation in this country has been long delayed. The principal explanation is that the States have not been able to establish unemployment-compensation laws because, in doing so, they would have been compelled to handicap their industries in competition with those of other States not having such laws. Under the plan proposed in this bill, this handicap will be removed, and it will be possible to set up unemployment-compensation laws through State action."

See also H. Rep. No. 615, 74th Cong., 1st Sess., p. 8.

[7] If a state law provides for a contribution equivalent to the federal tax, an increase of 10% in the tax burden results from the fact that the credit against the federal tax is limited to 90 percent. (Section 902.) Actually a State may avoid even this slight additional burden by a law imposing a contribution amounting to 90 percent of the federal tax, or less, so that all of it may be credited. See, *e. g.*, Massachusetts General Laws (Tent. Ed.), ch. 151A, Sec. 3 (a). This device has been adopted by many States in their estate or inheritance tax laws to take advantage of the similar credit allowed by the federal estate tax.

may, therefore, still refrain from the enactment of unemployment compensation legislation. However, it now has an alternative which did not before exist, namely, to enact an unemployment compensation law without imposing upon its citizens a burden greater than that borne by their competitors in the neighboring State having no similar law. Yet the out-of-pocket expense to the employers in a State is made no less by the failure of the State to act. Under the Act the States pass upon unemployment compensation in accord with their individual opinion of its value, unhampered by the fear of ruinous competition from their neighbors.

In this respect the effect of the legislation here under consideration is closely akin to that of the statute prohibiting the transportation of prison made goods into any State prohibiting the sale of such goods, recently before this Court in *Kentucky Whip & Collar Co.* v. *Illinois Central R. R. Co.*, No. 138, October Term, 1936, January 4, 1937. There Congress "put forth its power to regulate interstate commerce so as to prevent that commerce from being used to impede the carrying out of the state policy." So here, Congress has put forth its power to tax for the same end, as well as to carry out the objective entrusted under its power to tax and provide funds for the general welfare.

Of special significance as showing the cooperative character of the statute at bar is Section 906, which permits the States to require payments to

an unemployment compensation fund to be made by persons engaged in interstate commerce. Were no such provision made by Congress, perhaps the States would be unable to tax employers engaged in interstate commerce or to levy a tax with respect to employees engaged in such commerce. Insuperable administrative difficulties might well be encountered by the States in attempting to distinguish between the local and interstate employees in particular enterprises. Congress has thus aided the States not only by equalizing competitive disadvantages among employers in the various States, but also by removing the practical administrative barriers to state action caused by constitutional prohibitions against laying tax burdens on interstate commerce. Here Congress has acted as it did in permitting States to tax national bank shares (Section 5219, Revised Statutes; *Van Allen* v. *The Assessors,* 3 Wall. 573), or in permitting application of state prohibitory laws to goods in the original package. *Whitfield* v. *Ohio,* 297 U. S. 431.

Striking evidence of the lack of coercion of the federal statute is the fact that two States have declared through their highest courts that they did not consider themselves coerced by Title IX into passing their legislation. *Howes Bros.* v. *Massachusetts U. C. Comm.,* (Mass Sup. Jud. Ct., December 30, 1936), 5 N. E. (2d) 720; *Gillum* v. *Johnson,* (Calif. Sup. Ct.), 62 P. (2d) 1037. In addition, several States have refused to pass unemployment

compensation laws and have preferred to have their citizens continue to pay the full tax levied by Title IX.[8]

It may be objected that even though a State may now be able to enact unemployment compensation legislation without economic prejudice, nevertheless its course of conduct is dictated in advance because to take advantage of the new alternative presented it must enact legislation complying with the requirements of Section 903 (a). Actually, although it is true that the credit is available only if the requirements of Section 903 (a) are met, that fact is of negligible consequence in limiting the freedom of State action in enacting unemployment compensation laws. The requirements have already been considered at length in our discussion of their propriety under the Fifth Amendment (pp. 71–77, *supra*). It is quite evident from that discussion that they do not limit a State to any particular type of unemployment insurance; rather, they are primarily designed to insure that no deduction be taken under a state law which does not in fact establish a state unemployment compensation system.[9] In other words, they constitute an

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[8] Thus the legislature of Illinois has several times rejected bills to provide a state unemployment compensation system. Similarly the legislature of Delaware has rejected such a bill.

[9] The one provision of Section 903 (a) which does not fall entirely within this category is subdivision (3), which provides that all money received in the unemployment fund shall

enumeration of the prerequisites to any plan of unemployment compensation properly so called.

Brief reference to the different types of unemployment compensation which a State might establish,[10] and the major issues under each of the types which each State must work out in its own way, will show clearly that Section 903 (a) cannot properly be construed as a limitation upon the right of a State to establish whatever plan of unemployment compensation it regards as most desirable.

There are, in general, three main types of unemployment compensation which a State may enact. The first type is a pooled unemployment fund, in which all contributions are commingled and from which payments of compensation are made to unemployed workmen without reference to the employer for whom they had worked. In connection with such a fund, a separate bookkeeping account may be kept for each employer, showing what he contributes and what his workmen draw, and reduced rates, known as merit ratings, may in time be allowed for employers whose records merit such treatment. This type of law is in effect in Alabama, California, New York and several other

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immediately upon such receipt be paid over to the Secretary of the Treasury to the credit of the Unemployment Trust Fund of the State. This provision has also been discussed at pp. 77–82, *supra*.

[10] A tabular representation of the chief features of the various state unemployment compensation laws will be found in a chart inserted at the end of the Appendix.

States. Most of these state laws provide for merit ratings.

A second type of unemployment compensation is a system of unemployment reserve acounts. In this type, each employer makes his contributions into a specially segregated account, and each workman, when he becomes unemployed, must look for compensation to the particular unemployment reserve account accumulated by his former employers. Usually, the law provides that an employer may, after his account has accumulated to a certain point and has shown ability to withstand the drain of benefit payments, contribute at a reduced rate, or not at all. This plan is in effect in Wisconsin, and, together with a system of partial pooling, in Indiana, Oregon, and Kentucky.

A third type provides for guaranteed employment accounts. By this plan, an employer undertakes to give a certain minimum period of employment during the year to each of his employees, and at the same time contributes to an account or fund which can be drawn on by any of his employees as to whom the guaranty is not fulfilled or renewed. The plan usually provides that an employer who has fulfilled his guaranty in the past shall in the future either not contribute or contribute at a reduced rate. This plan is in operation in connection with a plan of pooled funds or a plan of unemployment reserve accounts in California, Idaho, Indiana, Minnesota, Oregon, and Wisconsin.

Not only have the States complete independence with respect to the major type of plan, or combinations of any of them, which they desire to adopt, but also they may fill in the scheme with such details as they may believe best. Within the framework of the three main types of systems above described there are now in effect eleven different variations with respect to the type of fund. The size of the firm covered shows twelve variations, ranging from employers of one or more at any time, in the District of Columbia, and employers of one or more within any 20 weeks of the year, in six States, to employers of eight or more within any 20 weeks, in twenty-three States. Types of employment which may be specifically included or excluded are completely within the discretion of the States. For example, five States exclude insurance agents, although the labor of such persons comes within the definition of employment in Title IX, and New York includes domestic service and maritime service, which are excluded from the Federal Act.

Contributions and benefits are likewise determined by the States. Employers alone may be required to contribute, as the New York act provides; employers and employees may both be included as in California, or the State may itself contribute in addition to either of the above schemes as in the District of Columbia. Contributions may be subject to future increase or reduction upon the basis

of merit ratings as in most present state acts, or there may be no such variation, as in the acts of Massachusetts, Mississippi, New York and Rhode Island. The amount of the benefits, the variations for total and partial unemployment, the maximum and minimum periods during which benefits shall be paid, the weight, if any, to be given to the length of the prior employment, and the provisions for seasonal workers are all problems which the States have solved for themselves and in the solution of which the widest variety is found. The same is true of the conditions imposed upon the receipt of benefits—the employment qualifying period, the waiting period, and all the various disqualifications which may be found desirable by any State. For example, a State is free to impose or not to impose a "means test" as a condition to the payment of compensation. All the details of administration are subject to the same discretion, such as the appeals procedure and the agency under which the law is administered.

Had Title IX been intended as a statute to regulate the type of laws which were to be enacted by the States, compliance with the type of unemployment compensation law which Congress preferred, and its best judgment on the details, would have been made prerequisites to the deductions. This has not been done. The decision upon all these matters has been left to the States. The requirements of Section 903 (a) go no further than to require that the law which exacts contributions for

which credits are allowed shall in fact be an unemployment compensation law, and not something different masquerading under that title.

We have discussed the various provisions of Section 903 (a) in some detail earlier (*supra*, pp. 71–77). At this point attention may be directed to the provisions of Paragraph (5) of this Section, since it may be charged that these provisions, in effect, coerce the States into the adoption of labor relations acts and hence interfere with their internal policy. Paragraph (5) requires that compensation be not denied any otherwise eligible individual for refusing to accept new work if (A) the position offered is vacant due directly to a labor dispute, (B) the wages, hours, or other conditions of employment are substantially less favorable to the individual than those prevailing for similar work in the locality, or (C) the individual is required to sign a yellow-dog contract as a condition of employment.

The appropriateness of Clause (B) is obvious. A genuine unemployment compensation law must include a standard for determining the suitability of new work, since it is manifest that benefits should not be denied to a man who refuses unsuitable work. The simplest test of suitability, which depends upon external evidence rather than an exercise of individual judgment, is that the wages, hours, and other conditions of employment shall not be substantially less favorable than those prevailing for similar work in the locality.

The conditions contained in clauses (A) and (C) are similarly appropriate criteria of the genuineness of an unemployment compensation law. The refusal to pay unemployment benefits to a man who refuses to engage in strike-breaking activities or to sign a yellow-dog contract would amount to employing a purported unemployment compensation law as a weapon in industrial controversy, and would at the same time operate to increase the burden on the federal treasury for relief of the persons thus denied unemployment compensation.

The charge that these provisions constitute the imposition of a labor policy on the States is without substance. There is no requirement, express or implied, that a State should provide benefits for workers on strike. Indeed, some States have specifically denied benefits to strikers. *E. g.*, Massachusetts General Laws (Ter. Ed.), Ch. 151A, Sec. 19a. There is no requirement, express or implied, that the States outlaw the yellow-dog contract or enact legislation protecting collective bargaining. A State may take any position it desires towards yellow-dog contracts. It should do so, however, through appropriate legislation designed for that purpose and not through an unemployment compensation law. Far from imposing an alien policy upon the States, Congress has acted so as to insure that the granting of the credit will not result in the perversion of an unemployment compensation system into an instrument for carrying out some other policy which the State may, if it desires, carry out

through other legislation entirely within its own control. The conditions of Section 903 (a), instead of making Title IX a disguised labor relations act, are designed to prevent a credit being given for a supposed unemployment compensation law which is in fact a disguised labor relations act. Moreover, as we have shown, the conditions of Section 903 (a) are clearly separable from the remainder of the Act.

We submit, therefore, that the tax levied by Title IX can in no proper sense be considered as compelling the States to take any action, much less action of a particular sort. On the contrary, we believe that when accurately evaluated it is a means by which the economic factors which in the past have prevented State action are removed, leaving the States with a new freedom to enact unemployment compensation legislation of any type they may individually believe best suited to their local conditions.

2. Even if the tax levied by Title IX be considered as a factor which makes it more desirable for a State to enact an unemployment compensation law, nevertheless its validity is established by decisions of this Court

We believe that the foregoing argument constitutes a complete answer to petitioner's contention that the tax here involved is designed to coerce state action. But, alternatively, we submit that to apply the term "coercion" to any possible inducement which may be spelled out by petitioner is to go not only far beyond any proper definition of the

term, but also contrary to the decisions of this Court.

The chief basis upon which petitioner rests his claim of state coercion is the allegation that economically, a State is forced to allow its citizens to take advantage of the 90% credit against the Federal tax.

It must certainly be true that only in rare and exceptional circumstances will a tax be rendered invalid by a credit or a deduction. Every credit and deduction exercises a certain amount of pressure, inducing persons to act in ways they might not otherwise select and which Congress is quite powerless to command. Illustrations are abundant, but specific reference may be made to the deductions offered to life insurance companies by the Revenue Acts of 1921 and 1924 (Secs. 244, 245), which undoubtedly induced the companies to subject themselves to levies which Congress could not have required. *Helvering* v. *Independent Life Insurance Co.*, 292 U. S. 371, 380, 381. Again, the deduction from gross income for charitable contributions has undoubtedly a tendency to induce more liberal gifts. The pressure must be strong indeed to require a holding that a credit or deduction will invalidate a tax.

Hitherto this Court has held that a tax is coercive where its burden can be avoided by submission to a system of regulation prescribed by Congress. *Child Labor Tax Case*, 259 U. S. 20; *Hill* v. *Wallace*, 259 U. S. 44. In these cases the coercion existed

by reason of the fact that the tax burden constituted an overwhelming inducement to adopt an alternative course of conduct which the Federal Government could not otherwise have prescribed. The result may be the same where the coercive effect of the tax burden operates to compel alternative action by the State in order to relieve the citizens of the State of a financial burden. An example would be a tax imposed on employers with an exemption in favor of employers in those States which had passed laws prohibiting child labor. Such a tax would perhaps stand on the same footing as the tax condemned in the *Child Labor Tax Case, supra.*

The tax and credit at bar are far different from such prohibited exactions. A State which enacts an unemployment compensation law does not give its citizens occasion to avoid the tax burden, since the taxpayer pays precisely the same amount whether there be a state law or not. If any inducement be held out to the State it is certainly not the inducement to submit to regulation as the price of escaping a crushing burden. At the most the State will find it advantageous to enact its own unemployment compensation law if it considers it desirable to provide systematic relief against unemployment. If it does not care to do so, it can suffer little, if any, detriment, since the tax burden on its citizens remains the same, and since the relief of its unemployed will, in all probability, still be undertaken in large part by the Federal Government.

(See footnote 74, p. 27, *supra*.)[11] Consequently where a State does set up its own unemployment compensation system the pressure exerted upon it by the credit provided in the federal act is no greater, and perhaps even less, than the pressure exerted by a grant in aid such as that considered in *Massachusetts* v. *Mellon*, 262 U. S. 447. If the Federal Government had made grants in aid to the States to be distributed by the States under unemployment compensation laws enacted by them, the answer to any charge of coercion would have been that given by Mr. Justice Sutherland in the case cited (p. 482):

> Nor does the statute require the States to do or to yield anything. If Congress enacted it with the ulterior purpose of tempting them to yield, that purpose may be effectively frustrated by the simple expedient of not yielding.

Lastly, it is to be observed that whatever the degree of inducement may be, it is only an inducement with respect to fiscal legislation, to accomplish an end which could otherwise be accomplished by the spending power of the Federal Government. If a State can be said to be induced to set up an unemployment compensation system it is in-

[11] A State which enacts an approved unemployment compensation law receives the benefits of grants to aid in the expenses of administering its law under Title III, but as we shall show later these benefits are but slight and incidental inducements and do not constitute an integral part of the system. See *infra*, pp. 124–127.

duced to undertake the relief of its unemployed who would otherwise be a charge on the Federal Government. Since the Federal Government, as we have shown earlier, is enabled under its power to appropriate for the general welfare to spend money for the relief of the unemployed, it cannot be said that it has gone beyond its power if it enacts legislation inducing the States to make expenditures for this same purpose. We have shown earlier that the Constitution permits the Federal Government to ~~require~~ encourage contributions to be made directly by the treasuries of the individual States for purposes within the federal spending power. (*Supra*, pp. 53–57.) The case is but little different where the Federal Government acts by way of inducement to bring about the raising and expenditure of moneys for the same purposes within the States.

It will be readily seen that the power here exercised, if it amounts to an inducement to the States to adopt some course of action, only induces fiscal action for a purpose for which the federal spending power is now being exercised. The power thus carries its own inherent limitations and could not conceivably be extended so as to invade the reserved field of the States or to destroy the dual system of government.

It is unnecessary to argue in the abstract about degrees of inducement, however, for there is a direct precedent which completely answers petitioner's contention. Section 301 of the Revenue Act

of 1926 imposes a tax upon the transfer of a decedent's estate, while at the same time permitting a credit, not exceeding 80 percent for "the amount of any estate, inheritance, legacy, or succession taxes actually paid to any State or Territory." The large credit granted thereby not only has the effect of reducing substantially the federal revenues, but also operates to remove the incentive for wealthy persons to move to States having no death taxes, and induces such States to levy death taxes.

The State of Florida challenged those provisions in *Florida* v. *Mellon,* 273 U. S. 12. Florida itself had no inheritance taxes and alleged that under its constitution it could not levy any. 273 U. S. 12, 15. Indeed, by abolishing inheritance taxes, it had hoped to induce wealthy persons to become its citizens.[12] See 67 Cong. Rec., Part 1, pp. 735, 752. In this Court, Florida contended that "The Estate Tax provision was not passed for the purpose of raising federal revenue" (273 U. S. 12, 14), but rather "to coerce States into adopting estate or inheritance tax laws." 273 U. S. 12, 13.[13] In fact,

[12] Cf. H. Rep. No. 1, 69th Cong., 1st Sess., p. 15.

[13] It may be pointed out that Congress seriously considered repealing the estate tax entirely at that time. After the House had passed a bill providing for an 80 percent credit, the Senate Committee on Finance recommended repeal of the entire estate tax law, it being stated that: "The application of the 80 percent provision, together with the cost to the Government of collecting the remaining 20 percent does not justify the retention of this tax." S. Rep. No.

as a result of the 80 per cent credit, 36 States did materially change their inheritance tax laws and 3 amended their constitutions. See Perkins, *State Action under the Federal Estate Tax Credit Clause,* 13 North Carolina Law Review, 271. Yet this Court found no difficulty in sustaining the validity of those provisions. The case did, it is true, involve a jurisdictional issue, but the Court also passed upon the merits of the controversy, stating that "the act assailed was passed by Congress in pursuance of its power to lay and collect taxes, and * * * must be held to be constitutional." 273 U. S., p. 17. The decision has, in fact, been cited several times as a holding upon the merits. See *Poe* v. *Seaborn,* 282 U. S. 101, 117–118; *Phillips* v. *Commissioner,* 283 U. S. 589, 602. In any event there can be no doubt as to the constitutionality of the federal estate tax. See *Rouse* v. *United States,* 65 C. Cls. 749, certiorari denied, 278 U. S. 638. *Cf. Porter* v. *Commissioner,* 288 U. S. 436; *Helvering* v. *City Bank Co.,* 296 U. S. 85.

We submit that the decision in *Florida* v. *Mellon, supra,* is conclusive in this case, and that the tax levied by Title IX is not, properly considered, a coercive act, but one which increases, rather than decreases, the freedom of the States to act. If, however, the Court believes that inducement, to a

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52, 69th Cong., 1st Sess., p. 8. The Senate thereupon passed a bill repealing the estate tax. In conference, the Senate receded from its position. H. Rep. No. 356, 69th Cong., 1st Sess., pp. 7–24.

degree, is offered, nevertheless the tax is not rendered invalid thereby.

IV

THE GRANTS IN AID TO THE STATES UNDER TITLE III DO NOT AFFECT THE VALIDITY OF THE TAX IMPOSED BY TITLE IX

We have shown above that the tax imposed by Title IX is a valid exercise of the powers of Congress under Article I, Section 8, Clause 1 of the Constitution, and that its character as a tax is not destroyed or affected by reason of the credits allowed under Section 902. We have also shown that, as such an exercise of the taxing power, Title IX does not violate either the Fifth Amendment, the Tenth Amendment or impair the dual character of our government.

Petitioner, however, alleges that even assuming that Title IX, standing alone, would be valid, nevertheless the presence of Title III of the Act, under which Congress has authorized an annual appropriation of $49,000,000 "for the purpose of assisting the States in the administration of their unemployment compensation laws" renders Title IX unconstitutional. Petitioner argues that even assuming that Congress framed the tax under Title IX to raise large revenues, Congress intended to use these funds to finance the grants-in-aid under Title III, and that this purpose robbed the tax under Title IX of its true tax character because a tax can be laid for general revenue only and a tax

laid for a particular purpose is no tax at all. Moreover, petitioner alleges that even if a tax may be laid to raise revenue for a particular purpose, the tax is bad if the purpose is an improper one, and the purpose here—subventions to the States for expenses of administration of unemployment compensation laws—is improper.

We believe that Title III is wholly immaterial for purposes of the present suit. First, Title III is wholly distinct from Title IX, and for that reason need not be considered. Moreover, even if it be considered, we submit that the grants are, in all respects a constitutional exercise of the power of the Federal Government to spend money to provide for the general welfare, and that a tax may therefore be levied in order to raise the money to make those grants.

A. Title III is in fact and in law wholly separate from Title IX, and need not, therefore, be considered

1. Title III is, as a matter of fact, unrelated to Title IX

Section 905 (a) of the Act provides that the tax imposed by Title IX "shall be collected by the Bureau of Internal Revenue * * * and shall be paid into the Treasury of the United States as internal-revenue collections." The proceeds are not nominally or in substance set aside for any particular purpose, or earmarked in any way, but are, along with the proceeds of other taxes, mingled in

the general funds of the United States Treasury.

Petitioner, however, argues that the proceeds are, in some way, related to Section 301 of the Act, which provides:

> For the purpose of assisting the States in the administration of their unemployment compensation laws, there is hereby authorized to be appropriated, for the fiscal year ending June 30, 1936, the sum of $4,000,000, and for each fiscal year thereafter the sum of $49,000,000, * * *.

The statute itself obviously does not in any way relate the revenues to be derived under Title IX to the contemplated expenditures under Title III. Taxpayer, therefore, is faced with the heavy burden of proving that there should be read into the Act a direct relation between these two titles. We submit that if the Court wishes to go behind the face of the Act, it is apparent from various factors that Congress did not intend that the Title IX revenues and the Title III expenditures should be related.

At the outset it should be noted that Title III makes no actual appropriation of the amounts specified in Section 301. It merely authorizes future appropriations for the purposes there specified,[14] but those appropriations may never be made at all, or may be wholly different in amount. Actu-

[14] The authorization has no legal effect except compliance with Rule XXI, clause 2, Jefferson's Manual and Rules of the House of Representatives.

ally, of the $4,000,000 authorized to be appropriated for the fiscal year ending June 30, 1936, only $2,250,000 was appropriated,[15] and of the $49,000,000 authorized for the next fiscal year only $29,000,000 was appropriated.[16] These appropriations were made long before the due date of the tax imposed by Title IX.

Furthermore, even if the $49,000,000 authorized to be expended by Section 301 be accepted as a criterion of probable appropriations, it is plain that there is no equivalence between that amount and the proceeds of the Title IX tax. The rate of tax under Title IX changes from 1 percent for the first year to 2 percent for the second and 3 percent for the third, but the appropriation remains constant at $49,000,000. The estimated revenues, even if it be assumed that all employers become entitled to the 90 percent credit, will range from $20,000,000 for the first year to over $90,000,000 for the year 1950.[17] Moreover, as States enact unemployment compensation laws, and more employers thus become entitled to the 90 percent credit, the revenues under Title IX will decrease, while *pari passu* expenditures under Title III will increase. But even if all States eventually adopt unemployment compensation laws and all employers become entitled to the 90 percent credit, the revenues from

[15] Act of February 11, 1936, c. 49, 49 Stat. 1109, 1113.
[16] Act of June 22, 1936, c. 689, 49 Stat. 1597, 1605.
[17] See footnote 82, p. 42–43, *supra*.

Title IX will far exceed the appropriations authorized under Title III.

The most that can be said is that Congress realized that the operation of the Social Security Act would require the expenditure of federal funds and therefore made provision for raising additional revenue for the general support of the Treasury. But this does not mean that the proceeds of this particular tax will be used in making the expenditures under Title III. As in *Frothingham* v. *Mellon,* 262 U. S. 447, the taxpayer's interest in the appropriation from the general funds is too remote and indefinite to give him any standing to question the expenditure. See also *Knights* v. *Jackson,* 260 U. S. 12, 15.

United States v. *Butler,* 297 U. S. 1, is not contrary to this conclusion. The sole object of the Agricultural Adjustment Act was "to restore the purchasing power of agricultural products" (p. 58), and the entire proceeds of the tax were appropriated in aid of crop control (p. 59). "A tax automatically goes into effect * * * when the Secretary of Agriculture determines that rental or benefit payments are to be made * * *. The tax is to cease when rental or benefit payments cease." (*Ibid.*) None of the revenue was made available for general governmental use (*Ibid.*). None of these striking correlations are present in the instant case; rather, it is governed by the rule of *Frothingham* v. *Mellon,* 262 U. S. 447.

2. Titles IX and III are legally separable

Even if Title III were related in fact to Title IX, its validity is immaterial in the present case since it is, in law, clearly separable from Title IX, and should not, therefore, now be considered.

Section 1103 of the Act provides:

> If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances shall not be affected thereby.

While the separability clause does not constitute an inexorable command, it creates a strong presumption that one invalid portion of the statute will not cause it all to fall. The presumption can be overcome only by considerations which establish "the clear probability that the invalid part being eliminated the legislature would not have been satisfied with what remains" (*Williams* v. *Standard Oil Co.*, 278 U. S. 235, 242), or, as the same principle is expressed in *Utah Power & Light Co.* v. *Pfost*, 286 U. S. 165, 184–185, by evidence showing "the clear probability that the legislature would not have been satisfied with the statute unless it had included the invalid part." See *Carter* v. *Carter Coal Co.*, 298 U. S. 238, 312–313. We submit that not only is there no clear evidence of such an intention on the part of Congress, but rather that the evidence indicates that Title IX was intended to be legally distinct from Title III.

There can be no doubt that Title IX can operate alone as a complete and workable taxing statute. It fixes the rate of tax, its subject, provides for certain credits, and establishes a procedure for its collection. And it is in no sense dependent upon Title III. The fact that Title III does not actually appropriate any funds; the absence of relation or equivalence between estimated revenues and even authorized appropriations; the mingling of the funds derived from Title IX with the general revenues of the Government and the appropriation of the grants in Title III from the general funds, all show that Congress intended the titles to operate separately.

Even more significant is the fact that the appropriations under Title III, even if considered as allocable against the proceeds of the tax, form only a part of the amount which Congress expects to collect. See p. 123, *supra*. Surely, it is unlikely that Congress would have wished to have an important revenue statute fall merely because an authorization of appropriations of a much smaller sum might be invalid. Compare *Field* v. *Clark*, 143 U. S. 649; *National Life Ins. Co.* v. *United States*, 277 U. S. 508; *Huntington* v. *Worthen*, 120 U. S. 97; *Brazee* v. *Michigan*, 241 U. S. 340; *Utah Light & Power Co.* v. *Pfost*, 286 U. S. 165, 185.

Indeed, petitioner's own argument proves that Congress intended that Title IX should stand even though Title III should be stricken down. It

argues that the Congressional policy in passing the Act was, through the allowance of the credits, to make it possible for the States to pass unemployment compensation laws. We have already shown that the presence of this policy in framing the credits under a revenue act does not render it invalid but, in any event, it is apparent that the policy was to be achieved by means of the tax and credit rather than by the relatively small appropriations under Title III. At least, it cannot be assumed that Congress intended that an important revenue statute so framed as to achieve this policy should fall merely because the relatively unimportant authorized appropriations under Title III were beyond its power.

Moreover, the language of Section 303 (a), authorizing grants to States with unemployment compensation laws "approved under Title IX" which *in addition* meet the requirements of Section 303 (a) indicates clearly a Congressional intent to regard Title III as cumulative, rather than as an integral part of Title IX. Compare *Liggett Co.* v. *Lee,* 288 U. S. 517, in which the Court separated and sustained the basic tax despite the fact that a provision for increasing it in a particular situation was unconstitutional. See also *Sonzinsky* v. *United States, supra.*

We submit, therefore, that both in fact and in law Title III is independent of Title IX, and that its validity need not be adjudged in the present case.

B. Title III is, in any event, a valid exercise of the spending power of Congress.

Assuming, however, that the taxpayer is in a position to question Title III, we submit that there can be no constitutional objection to grants by the Federal Government to the States "for the purpose of assisting the States in the administration of their unemployment compensation laws", nor to the levy of a tax for the purpose of raising the necessary revenue.

Article I, Section 8 of the Constitution empowers Congress—

> * * * to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States; * * *.

In this clause is found both the express power to tax in order to provide for the general welfare, and the implied, correlative power to spend in order to provide for the general welfare. Of course, if Congress may tax for this purpose it must have the power to appropriate the money which is raised to the same object. *United States* v. *Butler*, 297 U. S. 1, 65–67; *United States* v. *Realty Co.*, 163 U. S. 427, 440; *Legal Tender Case*, 110 U. S. 421, 440.

Public money, then, may be appropriated to the "general welfare". That term, though a limitation on the taxing and spending powers, is not itself limited by the subsequently enumerated powers,

but includes anything that by any "reasonable possibility" will conduce to the national welfare. The determination of what is for the general welfare is primarily for Congress; the courts will not substitute their judgment unless "*by no reasonable possibility*" can the challenged legislation fall within "the wide range of discretion" possessed by Congress. *United States* v. *Butler*, 297 U. S. 1, 67.

We submit (1) that the maintenance by the States of unemployment compensation laws will, by some reasonable possibility, conduce to the general welfare; (2) that the form of the present appropriation—conditional grants-in-aid to the States to pay administrative expenses under State laws—is entirely valid; (3) that if the grants are valid, Congress was empowered to levy taxes in order to raise the necessary revenue; and (4) that the title is not rendered invalid by any improper delegation of power to the Social Security Board.

1. The maintenance by the States of unemployment compensation laws will promote the general welfare of the United States

It is clear from the economic data already presented (pp. 9–29, *supra*) that the adoption by the States of unemployment compensation systems will certainly by some "reasonable possibility" conduce to the national welfare. Such systems will go far toward alleviating the evils of unemployment and preventing the full effect of cyclical depression periods. They will relieve intolerable

hardships to many millions of workers and their families. They will provide a sufficient safeguard for most of the unemployment that will occur in normal times. They will aid in the prevention of pauperism, with its concomitants of crime and vice. They will aid in the promotion of the general health, well-being and morality of the worker and will help to preserve his skill and efficiency. They will help to preserve peace and good order and avoid unrest. They will help to maintain purchasing power and avoid further unemployment and economic collapse. They will very materially lessen the federal relief burden in periods of depression. Since such state systems will promote the national welfare, it follows that the Federal government may cooperate with the States in the establishment and maintenance of these laws, by making money grants to assist them in administration expenses.

2. The form of the present appropriation—conditional grants-in-aid to the States to pay administrative expenses under State laws—is valid

The system of Federal grants of money or property to the States is one which has been exercised from the beginnings of the Government as an appropriate method by which the general welfare of the United States may be advanced by the exercise of Federal powers in cooperation with those of the States. Cf. *Hoke* v. *United States,* 227 U. S. 308, 322. Although the device was used infre-

quently by the early Congresses, its validity was never doubted, and during the last century it has become common in connection with a wide variety of matters.[18]

The practice apparently began with the Assumption Act (c. 34, 1 Stat. 138, 142) passed on August 4, 1790, by the first Congress, under which the Federal Government assumed the debts of the States incurred during the Revolution. The Act was sponsored by Alexander Hamilton. American State Papers, Finance, Vol. I, pp. 15–25. In 1803 Congress passed the first of a series of acts granting to each new State, upon its admission to the Union, certain lands for the use of the schools. Act of March 3, 1803, c. 21, 2 Stat. 225. In 1808 Congress appropriated $200,000 for the army and for equipping the state militia. Act of April 23, 1808, c. 55, 2 Stat. 490. See also Act of April 29, 1816, c. 135, 3 Stat. 320. In 1820, Congress passed the first of a long series of acts by which Congress appropriated to various states 5 percent of the proceeds of the sale of public lands within their borders, for the purposes of education, road construction or improvements. Act of March 6, 1820, c. 22, 3 Stat. 545, 547. See also, *e. g.*, Act of March 3, 1845, c. 75, 5 Stat. 788; Act of March 21, 1864, c. 36, 13 Stat.

[18] See A. F. MacDonald, *Federal Aid* (1928); *Digest of Legislation Providing Federal Subsidies for Education*, U. S. Dept. of Interior, Off. of Education, Bulletin No. 8, (1930).

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30, 32. In 1836 Congress provided that the surplus in the Treasury in excess of $5,000,000 should be deposited with the States, subject to their individual assent, under an agreement to repay upon a stated notice by the Secretary of the Treasury. Act of June 23, 1836, c. 115, 5 Stat. 52, 55. In 1841 Congress provided that the net proceeds of the sales of public lands should be divided among certain States, and that 500,000 acres of public land should be donated to each of nine specified States, and a similar amount to each new State, for purposes of internal improvement. Act of September 4, 1841, c. 16, 5 Stat. 453, 455.

The foregoing list is not intended to be exhaustive. Nor would it serve any purpose to set out in detail the vastly greater number of conditional grants which Congress has made to the States during the last century, to aid and encourage them in performing some function deemed by Congress to be conducive to the general welfare. A list of other acts of Congress providing for cooperation with the States is included in the Appendix to the Brief for the respondent Administrator in No. 32, *Duke Power Co.* v. *Greenwood County,* at pp. 90–98. Here it will be sufficient merely to refer to the larger categories.

The federal land grants, which began in 1803 (*supra,* p. 131), have been very extensive. Every State except the 13 original States and 5 others has received federal land grants for common

schools, a total of 77,510,737 acres.[19] Grants for normal schools and universities have aggregated 3,987,954 acres.[20] Every State has a land grant college.[21] See *Hamilton* v. *Regents,* 293 U. S. 245, 259. And many millions of acres have been given to the States for public buildings, roads, and other internal improvements.[22]

Aside from the land grants, large sums of money have been granted to the States for various purposes. In 1930 educational institutions in the States had received, since the second Morrill Act in 1890,[23] an aggregate of $318,138,727.65.[24] Numerous grants have been made for highway purposes, the expenditure of the Federal Government being limited to 50 percent of the estimated cost of the approved projects.[25]

Assistance in agriculture has been given by Federal grants, for example, to match state funds for

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[19] *Digest of Legislation, supra,* pp. 3–4, 15.

[20] *Id.,* p. 23.

[21] Act of July 2, 1862, c. 130, 12 Stat. 503; Act of July 23, 1866, c. 209, 14 Stat. 208.

[22] See MacDonald, *supra,* p. 14. See also, *e. g.,* Act of Sept. 20, 1850, c. 61, 9 Stat. 466; Act of May 15, 1856, c. 28, 11 Stat. 9; Act of August 18, 1894, c. 301, 28 Stat. 372, 422 (grant of desert areas on condition that they be reclaimed); Act of March 1, 1911, c. 186, 36 Stat. 961, 963 (grant of 5 percent of national forest revenues); Act of February 25, 1920, c. 85, 41 Stat. 437, 450 (grant of 37½ percent of receipts from oil lands and water power licenses).

[23] Act of August 30, 1890, c. 841, 26 Stat. 417.

[24] *Digest of Legislation, supra.*

[25] See, *e. g.,* Act of July 11, 1916, c. 241, 39 Stat. 355; Act of February 12, 1925, c. 219, 43 Stat. 889.

the suppression of the boll-weevil, the European corn-borer, and various cattle diseases.[26] Innumerable similar examples could be given in the fields of forest fire prevention,[27] vocational rehabilitation,[28] state militia,[29] and health and hygiene.[30]

This long-continued and well-established course of legislation is very persuasive evidence that the conditional grants here involved are an appropriate exercise by Congress of its spending power. *McCulloch* v. *Maryland,* 4 Wheat. 316, 401. The similar historical basis of a different exercise of legislative authority was evaluated by this Court in *United States* v. *Curtiss-Wright Export Corp.,* No. 98, December 21, 1936:

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[26] See, *e. g.*, Joint Res. of May 21, 1928, c. 665, 45 Stat. 688 (boll weevil); Act of February 6, 1931, c. 111, 46 Stat. 1064, 1067 (same); Act of February 9, 1927, c. 90, 44 Stat. 1065 (corn borer); Act of August 11, 1916, c. 313, 39 Stat. 446, 492 (cattle diseases).

[27] See, *e. g.*, Act of March 1, 1911, c. 186, 36 Stat. 961; Act of March 3, 1921, c. 127, 41 Stat. 1315, 1344; Act of June 7, 1924, c. 348, 43 Stat. 653. Thirty-three States have accepted benefits under the 1924 Act. MacDonald, *supra,* p. 43.

[28] Since 1920, Congress has appropriated annually $1,000,000 for this purpose, on condition that the States expend equal sums and meet certain requirements. Act of June 2, 1920, c. 219, 41 Stat. 735, 736, as amended by Act of June 5, 1924, c. 265, 43 Stat. 430, 431, and Act of June 30, 1932, c. 324, 47 Stat. 448, 449.

[29] See p. 131, *supra.* See also Act of January 21, 1903, c. 196, 32 Stat. 775; Act of June 3, 1916, c. 134, 39 Stat. 166, 215.

[30] See, *e. g.*, Act of November 23, 1921, c. 135, 42 Stat. 224; Act of July 9, 1918, c. 143, 40 Stat. 845, 886.

> A legislative practice such as we have here, evidenced not by only occasional instances, but marked by the movement of a steady stream for a century and a half of time, goes a long way in the direction of proving the presence of unassailable ground for the constitutionality of the practice, to be found in the origin and history of the power involved, or in its nature, or in both combined.

See also *Hampton & Co.* v. *United States,* 276 U. S. 394, 412; *Myers* v. *United States,* 272 U. S. 52, 175; *Martin* v. *Hunter's Lessee,* 1 Wheat. 304, 352; *Stuart* v. *Laird,* 1 Cranch 299, 309. Indeed, the practice of Congress in making such grants has been recognized in a number of cases, and it has never been suggested or supposed that they were beyond the power of Congress. See, *e. g., Nashville, C. & St. L. Ry.* v. *Walters,* 294 U. S. 405, 417; *Hamilton* v. *Regents,* 293 U. S. 245, 258–260; *Ervien* v. *United States,* 251 U. S. 41, 48; *United States* v. *Gratiot,* 14 Pet. 526.

The same answer may be given to the possible argument that Congress may not attach even such conditions to a grant as insure that it will be expended in accordance with its purpose. The requirements under Section 303 (a) are, in substance, the same as the provisions of Section 903 which, as we have shown (pp. 71–77, *supra*) are not regulatory, but merely insure that the credits will be allowed only for the administration of a genuine state unemployment compensation law.

The conditions do not differ in substance from those of many previous grants by Congress to the States. Many of them specify in detail the uses to be made of the money, require the States to meet certain Federal requirements, and provide for some degree of Federal supervision to insure that the money is spent in accordance with the terms of the grant.[21] Reasonable conditions of this sort do not amount to regulation. *United States* v. *Butler*, 297 U. S. 1, 73.

3. Since Congress was empowered to make the grants under Title III, it necessarily was empowered to levy taxes in order to raise the necessary revenue

Petitioner may argue that even if the grants are valid, nevertheless Congress could not lay a tax for the purpose of raising funds to make the grants because a tax laid to raise funds for a particular purpose, and not for general revenue only, is not a tax at all. It should be noted that the contention is not open to petitioner unless it can succeed in establishing not only that Titles III and IX are inseparable, but also that the funds raised by the tax levied under Title IX are in some fashion directly connected with the subventions under Title III (see pp. 121–127, *supra*). Even assuming, how-

[21] See, *e. g.*, Act of September 4, 1841, c. 16, 5 Stat. 453, 455, Sec. 9; Act of July 2, 1862, c. 130, 12 Stat. 503; Act of August 30, 1890, c. 841, 26 Stat. 417; Act of January 21, 1903, c. 196, 32 Stat. 775; Act of February 23, 1917, c. 114, 39 Stat. 929; Act of November 23, 1921, c. 135, 42 Stat. 224; Act of February 9, 1927, c. 90, 44 Stat. 1065.

ever, that petitioner can succeed in proving that the funds levied under Title IX are, in effect, "earmarked" for appropriation under Title III, we submit that the tax is not made invalid thereby.

Taxes are, of course, levied "for the purpose of providing funds for payment of the nation's debts and making provision for the general welfare." *United States* v. *Butler,* 297 U. S. 1, 64. Ordinarily, there is no indication in the act laying the tax of the particular purpose for which the funds are to be used, but it seems apparent that there is nothing unnatural or improper in relating specific anticipated government expenditures to specific revenues.[22] Some proponents of budgetary reform, knowing that earmarked taxes educate the taxpayer and act as a restraint on profligacy, believe that the connection should be made obligatory, as it is under the constitutions of several of the States (e. g., New York Constitution, Article III, Sec. 24; Michigan Constitution, Article X, Section 6). The fact that the Federal Constitution specifically requires that taxes be for the purpose of paying the debts or providing for the common defense and general welfare (Article I, Sec. 8) assumes the propriety of including in a taxing statute the purpose for which it is laid, providing, of course, that the purpose be a proper object of governmental expenditure.

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[22] See *Report of the Select Committee on the Budget*, H. Rep. No. 14, 67th Cong., 1st Sess.

Taxes for some particular purpose were common in England before the Constitution was adopted.[33] They are common in all the States, for purposes such as schools, roads and the like. Nor is it any new departure for Congress, by the act levying the tax, to earmark or even to appropriate the proceeds to a particular purpose. For example, in the Act of March 3, 1791, c. 15, 1 Stat. 199, 213–214, a tax was levied on spirits, and the proceeds were pledged and appropriated for the payment of interest on loans and the payment of the public debt. Again, in the Act of March 26, 1804, c. 46, 2 Stat. 291, tariffs were increased, the proceeds of the increase to be used for the sole purpose of carrying on a war against the Barbary powers. Since 1902 money for the support of the Philippine Islands has been raised by customs duties and internal revenue taxes in this country, the proceeds of which have often been earmarked for the Philippine Treasury. See, *e. g.*, Act of March 8, 1902, c. 140, 32 Stat. 54, Sec. 4; Act of June 17, 1930, c. 497, 46 Stat. 590, 686.[34]

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[33] See Holdsworth, *History of the English Law*, Vol. 6, p. 253; Blackstone, *Commentaries*, Vol. 1, p. 330 *et seq.*; Seligman, *Essays on Taxation* (1895 ed.) pp. 345–349.

[34] See also, *e. g.*, Act of May 8, 1792, c. 32, 1 Stat. 267, 270; Act of March 3, 1797, c. 10, 1 Stat. 503; Act of May 13, 1800, c. 66, 2 Stat. 84; Act of December 21, 1814, c. 15, 3 Stat. 152; Act of March 3, 1917, c. 159, 39 Stat. 1000; Act of April 23, 1924, c. 131, 43 Stat. 106. See also Brief for the United States in No. 659, *Cincinnati Soap Co.* v. *United States*, pp. 28–35.

Again we submit that the well-established practice of Congress cannot now be held to be unconstitutional. See p. 134, *supra; United States* v. *Curtiss-Wright Export Corp., supra.* Indeed, this Court has recognized that the relationship assumed to be present here between tax and expenditure is a normal and necessary incident of the legislative function. *Knights* v. *Jackson,* 260 U. S. 12, 15; *Patton* v. *Brady,* 184 U. S. 608, 620. See also *Carley & Hamilton* v. *Snook,* 281 U. S. 66, 71; *Nashville C. & St. L. Ry.* v. *Wallace,* 288 U. S. 249, 268; *Milheim* v. *Moffatt Tunnel District,* 262 U. S. 710, 719; *Green* v. *Frazier,* 253 U. S. 233; *Olcott* v. *The Supervisors,* 16 Wall. 678, 695, 696.

Neither the *Head Money Cases,* 112 U. S. 580, nor *United States* v. *Butler,* 297 U. S. 1, ~~are~~ is to the contrary. In the former the Court suggested that the specification of limited purposes of the levy was some indication that the legislation was not meant to be a tax. Since in the usual case revenue measures are for general rather than limited purposes this was probably relevant as *some* indication of the Congressional purpose. The opinion in no way indicated that such a specification would invalidate a statute which was clearly an exercise of the taxing power; on the contrary, it expressly stated that, as a tax statute "it would not be difficult to show" that the levy it authorized was "made for the general welfare" (112 U. S. at 595). In the *Butler* case the vice in the statute was not the appropriation of

the proceeds *per se*, but the appropriation to an unconstitutional purpose. Here, as we have shown, the purpose is clearly valid.

We submit, therefore, that even if the tax levied by Title IX be considered as laid for the purpose of making the subventions under Title III, the tax is nonetheless valid.

4. Title III contains no unconstitutional delegation of legislative power

The taxpayer urges that wholly apart from the foregoing considerations, Title III should be declared to be unconstitutional as an improper delegation of legislative power to the Social Security Board. The contention is based upon the provision of Section 302 (a), which provides:

> The Board shall from time to time certify to the Secretary of the Treasury for payment to each State which has an unemployment compensation law approved by the Board under Title IX, such amounts as the Board determines to be necessary for the proper administration of such law during the fiscal year in which such payment is to be made. The Board's determination shall be based on (1) the population of the State; (2) an estimate of the number of persons covered by the State law and the cost of proper administration of such law; and (3) such other factors as the Board finds relevant. The Board shall not certify for payment under this section in any fiscal year a

> total amount in excess of the amount appropriated therefor for such fiscal year.

We submit that the contention is wholly without merit (1) because the Constitution does not require Congress to specify in detail the manner in which public money is to be expended, and, alternatively, (2) Section 302 (a) provides standards adequate to guide the Board.

A. The Constitution Does Not Require Congress to Specify in Detail the Manner in Which Public Money Is to Be Expended [85]

Article I, Section 9, Clause 7 of the Constitution provides:

> No money shall be drawn from the Treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

This clause, phrased as a restriction on the power of expenditure, contains implicit recognition of the fact that the power is entrusted to the Executive. *Collins* v. *United States,* 15 Ct. Cl. 22, 35; *Compagna* v. *United States,* 26 Ct. Cl. 316, 317. The Constitution contains no requirement concerning the detail with which acts of appropriation shall specify the manner in which expenditures are to

[85] This argument is fully developed in the Brief for the respondent Administrator in No. 32, *Duke Power Co.* v. *Greenwood County*, October Term, 1936, at pp. 120–160, to which the Court is respectfully referred.

be made. That question the Constitution leaves in the discretion of Congress.

Congress may, of course, prescribe in the most minute detail both the objects to which funds shall be applied and the manner in which the expenditure shall be made. Correlatively, however, Congress may state in general terms the purposes for which money is appropriated and leave to the executive the determination of the details of the expenditure. The question is not one of power, but of policy. Not only the language of the Constitution, but also the historic practice, which was adopted by the Framers, and the practice of Congress since the adoption of the Constitution, make this clear.

The members of the Constitutional Convention plainly intended the function of appropriation to be the equivalent of that found in the English constitution,[28] which may thus be referred to in order to determine the dividing line between the legislative function of appropriation and the executive function of expenditure. *Ex parte Grossman*, 267 U. S. 87, 108–111; *Myers* v. *United States*, 272 U. S. 52, 118. The first grant to the King by Parlia-

[28] See statements by Madison (Formation of the United States, Documents Illustrative of the Formation of the Union of the American States, H. Doc. No. 398, 69th Cong., 1st Sess., p. 323); Wilson (*id.*, p. 337); Dickinson (*id.*, p. 533); and Rutledge (*id.*, pp. 534–535). See also Miller, *Constitutional Law*, pp. 205–209; Wilson, *Jurisprudence and Political Science* (1896 ed.), Vol. II, 42–44.

ment appears to have been made in 1275. See Stubbs, *Constitutional History,* Vol. II, p. 523. Sporadically, for centuries, such grants continued. Stubbs, *supra,* pp. 565–568. The important point is that the Parliamentary appropriation was not a grant of money for a narrowly specified purpose, but merely a legislative assent that the Crown should spend the proceeds of the tax in question for some broad purpose.

In 1698 there was the beginning of the "civil list." 9 & 10 Wm. III, c. 23, Sec. 14. Maitland, *Constitutional History of England,* p. 435. But not until the Civil List Act of 1782 (22 Geo. III, c. 82) passed five years before the Constitution was formed, did Parliament exercise any important supervision over ordinary civil expenditures (Maitland, *supra,* p. 436), and even that control was very limited. In some situations Parliament at that time exercised rather detailed supervision;[37] in some it attempted little or none at all beyond a broad statement of the purpose of the tax.[38] The legislative branch thus possessed a flexible limitation upon executive expenditures. Not until long after the adoption of the Constitution did more particularized appropriations become common in England.

The legislation and authoritative discussion in the years immediately following the adoption of

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[37] See, *e. g.*, Statutes at Large, 27 Geo. III, c. 33.

[38] See, *e. g.*, 20 Geo. III, c. 42, Sec. 3; Session Laws, 31 Geo. II, pp. 11, 15.

the Constitution also bear out the concept of a discretionary legislative function of appropriation which is as fully performed by a broad appropriation as by one which is detailed in character. The first appropriation act (Act of August 7, 1789, c. 9, 1 Stat. 53) appropriated an unspecified sum for the "necessary support, maintenance and repairs of all lighthouses, beacons, buoys and public piers" theretofore erected. The first general appropriation act (Act of September 29, 1789, c. 23, 1 Stat. 95) was almost wholly devoid of details as to expenditures. It is unnecessary to multiply examples [39] to make it plain that the members of this Congress, composed largely of members of the constitutional or ratifying conventions, did not understand the Constitution to require any degree of particularity in appropriation acts. Subsequent Congresses have continued the practice of appropriating money in terms which have varied widely between the minute and the exceedingly broad.[40]

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[39] See also Act of March 26, 1790, c. 4, 1 Stat. 104; Act of July 1, 1790, c. 22, 1 Stat. 128; Act of July 20, 1790, c. 30, 1 Stat. 135; Act of August 4, 1790, c. 34, 1 Stat. 138; Act of March 3, 1791, c. 28, 1 Stat. 222, 224.

[40] Acts which contain very broad appropriations include those of June 14, 1809, c. 2, 2 Stat. 547; Act of August 10, 1846, c. 175, 9 Stat. 85, 96; Act of July 31, 1861, c. 28, 12 Stat. 283; Act of April 3, 1874, c. 75, 18 Stat. 26; Act of March 24, 1900, c. 91, 31 Stat. 51; Joint Resolution of May 9, 1912, No. 19, 37 Stat. 633, 634; Act of February 25, 1927, c. 202, 44 Stat. 1244. A much more extended list is contained in the Appendix to the Brief for the respondent Administrator in No. 32, *Duke Power Co.* v. *Greenwood County*, at pp. 68–89.

The early commentators likewise appeared to have viewed the power of appropriation as a discretionary check upon the executive. See Hamilton, *The Federalist,* No. 72 (Lodge ed.) p. 72; *Works* (Ham. ed.), Vol. VII, pp. 532, 533. Gallatin, *Writings* (Adams ed.) Vol. III, pp. 73, 117. As a matter of *policy,* not of power, Jefferson and Hamilton disagreed on the practice of lump sum appropriations.[41] The former seems to have prevailed, for beginning with his administration, the appropriation acts became more detailed.[42] However, again as a matter of policy, excessive detail in appropriation has been criticised as tending toward, instead of away from, irresponsibility in administration.[43]

The argument does not, however, rest upon history alone, for there is in addition sound basis for it in reason—the basic distinction between powers which are coercive or regulatory, and those which are not. To apply the prohibition against delegation of power rigidly, without regard to the nature of the power exercised, would lead to grave and novel consequences. For example, Congress has granted broad powers in the administration of

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[41] See Jefferson, in Richardson, *Messages and Papers of the Presidents*, Vol. 1, p. 329; Hamilton, in *Works* (Ham. ed.) Vol. VII, p. 788.

[42] See, *e. g.*, Acts of May 9 and 14, 1836, c. 59–62, 5 Stat. 17–31.

[43] *Report of Committee on Economy and Efficiency*, H. Doc. No. 854, 62d Cong., 2d Sess.

public lands or property (*Butte City Water Co.* v. *Baker*, 196 U. S. 119, 126; *United States* v. *Chemical Foundation*, 272 U. S. 1, 12), the administration of the territories (*United States* v. *Heinszen & Co.*, 206 U. S. 370, 385), or the disposal of the property of the United States (*Ashwander* v. *Tennessee Valley Authority*, 297 U. S. 288). The same is true with respect to the power of Congress to establish fiscal agencies (*McCulloch* v. *Maryland*, 4 Wheat. 316, 335–337 (argument of counsel), 424; *Smith* v. *Kansas City Title & Trust Co.*, 255 U. S. 180, or to borrow money on the credit of the United States (See U. S. C., Title 31, Sections 752–757). Cf. *United States* v. *Curtiss-Wright Export Corp.*, No. 98, December 21, 1936.

The thorough separation of governmental powers into three departments was regarded by the framers and those upon whom they relied as the basic safeguard against tyranny or oppression by one official or body.[*] Unless coercion or regulation of individuals or private rights is involved, legislative delegation presents no danger of the results which the Framers feared.

Moreover, the decisions of both state and lower Federal courts have recognized that decision as to the details of an expenditure is not a legislative function. In *People* v. *Tremaine*, 252 N. Y. 27, the court said (pp. 44, 45):

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[*] See Gouveneur Morris (Formation of the Union, supra, p. 393); Madison (*id.*, p. 397–398); Wilson (*id.*, pp. 846, 947); Federalist, No. 47; Montesquieu, *Esprit des Lois*, Bk. II, c. 6. See also *Myers* v. *United States*, 272 U. S. 52, 116.

> The head of the department does not legislate when he segregates a lump sum appropriation. The legislation is complete when the appropriation is made. * * * The legislative power appropriates money and, except as to legislative and judicial appropriations, the administrative or executive power spends the money appropriated.

See also *United States* v. *Hanson*, 167 Fed. 881 (C. C. A. 9th); *Kansas Gas & Electric Co.* v. *City of Independence*, 79 F. (2d) 32 (C. C. A. 10th); *Greenwood County* v. *Duke Power Co.*, 81 F. (2d) 986 (C. C. A. 4th), rev'd on other grounds, No. 32, October Term, 1936, December 14, 1936; *State ex rel. Bonsteel* v. *Allen*, 83 Fla. 214; *Abbott* v. *Commissioners*, 160 Ga. 657; *Edwards* v. *Childer*, 102 Okla. 158; *Holmes* v. *Olcott*, 96 Ore. 33; *Moers* v. *City of Reading*, 21 Pa. 188, 202; *Chicago & N. W. R. Co.* v. *State*, 128 Wis. 553; *State* v. *Zimmerman*, 183 Wis. 132; *State* v. *Clausen*, 94 Wash. 166.[45]

Every source of authority, therefore, supports the view that the legislative function is fully performed when Congress grants money, designating the purpose and limit of its use. We submit, therefore, that there is no question of delegation raised by Section 302 (a) of the Act.

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[45] A contrary result was reached in *Franklin Township* v. *Tugwell*, 85 F. (2d) 208 (App. D. C.). The argument here made was not presented to or considered by the court. Cf. *Webster* v. *Fall*, 266 U. S. 507, 511.

B. In Any Event, Title III Provides Standards Adequate to Guide the Board in the Expenditure of the Money Appropriated

However, even if the standards of delegation of powers applicable to regulatory or coercive laws be applied, nevertheless there is, we submit, no improper delegation of power by Section 302 (a). The section supplies a primary standard—the amount which "the Board determines to be necessary for the proper administration of such law during the fiscal year." That standard is, in turn, further defined and limited by the specification of four other factors which the Board is required to take into consideration: (1) the population of the State; (2) an estimate of the number of people covered by the state law; (3) the total for all States must not exceed the appropriated amount; (4) such other factors as the Board finds relevant.

The case of *Hampton & Co:* v. *United States,* 276 U. S. 394, presents a very similar situation. The Tariff Act of 1922, Section 315, provided a primary standard, with several specific factors which the President was required to take into consideration. The fourth factor there—"any other advantages or disadvantages in competition"—is very similar to the fourth factor mentioned above. In each case the clause is to be read with an eye to the *eiusdem generis* maxim. Section 302 (a) seems clearly within the *Hampton* decision. See also *Field* v. *Clark,* 143 U. S. 649, 692. Congress has legislated as far as is reasonably practicable, and has made clear the policy. *Buttfield* v. *Stran-*

ahan, 192 U. S. 470, 496; *Jacobson* v. *Massachusetts,* 197 U. S. 11, 27. Beyond that it is not required to go.

CONCLUSION

Wherefore, we submit that Title IX of the Act should be declared constitutional in every respect, and that the decision of the court below denying the taxpayer's claim for the recovery of taxes paid should be affirmed.

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No. 837

In the Supreme Court of the United States

OCTOBER TERM, 1936

CHAS. C. STEWARD MACHINE COMPANY, PETITIONER

v.

HARWELL G. DAVIS, INDIVIDUALLY AND AS COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF ALABAMA, RESPONDENT

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

APPENDIX TO THE BRIEF FOR THE RESPONDENT

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APPENDIX A

THE SOCIAL SECURITY ACT (ACT OF AUGUST 14, 1935, c. 531, 49 STAT. 620, U. S. C., SUPP. II, TITLE 42, C. 7)

[H. R. 7260]

AN ACT To provide for the general welfare by establishing a system of Federal old-age benefits, and by enabling the several States to make more adequate provision for aged persons, blind persons, dependent and crippled children, maternal and child welfare, public health, and the administration of their unemployment compensation laws; to establish a Social Security Board; to raise revenue; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—GRANTS TO STATES FOR OLD-AGE ASSISTANCE

APPROPRIATION

SECTION 1. For the purpose of enabling each State to furnish financial assistance, as far as practicable under the conditions in such State, to aged needy individuals, there is hereby authorized to be appropriated for the fiscal year ended June 30, 1936, the sum of $49,750,000, and there is hereby authorized to be appropriated for each fiscal year thereafter a sum sufficient to carry out the purposes of this title. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by

the Social Security Board established by Title VII (hereinafter referred to as the "Board"), State plans for old-age assistance.

STATE OLD-AGE ASSISTANCE PLANS

SEC. 2. (a) A State plan for old-age assistance must (1) provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them; (2) provide for financial participation by the State; (3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan; (4) provide for granting to any individual, whose claim for old-age assistance is denied, an opportunity for a fair hearing before such State agency; (5) provide such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are found by the Board to be necessary for the efficient operation of the plan; (6) provide that the State agency will make such reports, in such form and containing such information, as the Board may from time to time require, and comply with such provisions as the Board may from time to time find necessary to assure the correctness and verification of such reports; and (7) provide that, if the State or any of its political subdivisions collects from the estate of any recipient of old-age assistance any amount with respect to old-age assistance furnished him under the plan, one-half of the net amount so collected shall be promptly paid to the United States. Any pay-

ment so made shall be deposited in the Treasury to the credit of the appropriation for the purposes of this title.

(b) The Board shall approve any plan which fulfills the conditions specified in subsection (a), except that it shall not approve any plan which imposes, as a condition of eligibility for old-age assistance under the plan—

(1) An age requirement of more than sixty-five years, except that the plan may impose, effective until January 1, 1940, an age requirement of as much as seventy years; or

(2) Any residence requirement which excludes any resident of the State who has resided therein five years during the nine years immediately preceding the application for old-age assistance and has resided therein continuously for one year immediately preceding the application; or

(3) Any citizenship requirement which excludes any citizen of the United States.

PAYMENT TO STATES

SEC. 3. (a) From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has an approved plan for old-age assistance, for each quarter, beginning with the quarter commencing July 1, 1935, (1) an amount, which shall be used exclusively as old-age assistance, equal to one-half of the total of the sums expended during such quarter as old-age assistance under the State plan with respect to each individual who at the time of such expenditure is sixty-five years of age or older and is not an in-

mate of a public institution, not counting so much of such expenditure with respect to any individual for any month as exceeds $30, and (2) 5 per centum of such amount, which shall be used for paying the costs of administering the State plan or for old-age assistance, or both, and for no other purpose: *Provided,* That the State plan, in order to be approved by the Board, need not provide for financial participation before July 1, 1937, by the State, in the case of any State which the Board, upon application by the State and after reasonable notice and opportunity for hearing to the State, finds is prevented by its constitution from providing such financial participation.

(b) The method of computing and paying such amounts shall be as follows:

(1) The Board shall, prior to the beginning of each quarter, estimate the amount to be paid to the State for such quarter under the provisions of clause (1) of subsection (a), such estimate to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such clause, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than one-half of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, (B) records showing the number of aged individuals in the State, and (C) such other investigation as the Board may find necessary.

(2) The Board shall then certify to the Secretary of the Treasury the amount so estimated by the Board, reduced or increased, as the case may be, by any sum by which it finds that its estimate for any prior quarter was greater or less than the amount which should have been paid to the State under clause (1) of subsection (a) for such quarter, except to the extent that such sum has been applied to make the amount certified for any prior quarter greater or less than the amount estimated by the Board for such prior quarter.

(3) The Secretary of the Treasury shall thereupon, through the Division of Disbursement of the Treasury Department and prior to audit or settlement by the General Accounting Office, pay to the State, at the time or times fixed by the Board, the amount so certified, increased by 5 per centum.

OPERATION OF STATE PLANS

SEC. 4. In the case of any State plan for old-age assistance which has been approved by the Board, if the Board, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, finds—

(1) that the plan has been so changed as to impose any age, residence, or citizenship requirement prohibited by section 2 (b), or that in the administration of the plan any such prohibited requirement is imposed, with the knowledge of such State agency, in a substantial number of cases; or

(2) that in the administration of the plan there is a failure to comply substantially with any provision required by section 2 (a) to be included in the plan;

the Board shall notify such State agency that further payments will not be made to the State until the Board is satisfied that such prohibited requirement is no longer so imposed, and that there is no longer any such failure to comply. Until it is so satisfied it shall make no further certification to the Secretary of the Treasury with respect to such State.

ADMINISTRATION

SEC. 5. There is hereby authorized to be appropriated for the fiscal year ending June 30, 1936, the sum of $250,000, for all necessary expenses of the Board in administering the provisions of this title.

DEFINITION

SEC. 6. When used in this title the term "old-age assistance" means money payments to aged individuals.

TITLE II—FEDERAL OLD-AGE BENEFITS

OLD-AGE RESERVE ACCOUNT

SECTION 201. (a) There is hereby created an account in the Treasury of the United States to be known as the "Old-Age Reserve Account" hereinafter in this title called the "Account." There is hereby authorized to be appropriated to the Account for each fiscal year, beginning with the fiscal year ending June 30, 1937, an amount sufficient as an annual premium to provide for the payments

required under this title, such amount to be determined on a reserve basis in accordance with accepted actuarial principles, and based upon such tables of mortality as the Secretary of the Treasury shall from time to time adopt, and upon an interest rate of 3 per centum per annum compounded annually. The Secretary of the Treasury shall submit annually to the Bureau of the Budget an estimate of the appropriations to be made to the Account.

(b) It shall be the duty of the Secretary of the Treasury to invest such portion of the amounts credited to the Account as is not, in his judgment, required to meet current withdrawals. Such investment may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at par, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under the Second Liberty Bond Act, as amended, are hereby extended to authorize the issuance at par of special obligations exclusively to the Account. Such special obligations shall bear interest at the rate of 3 per centum per annum. Obligations other than such special obligations may be acquired for the Account only on such terms as to provide an investment yield of not less than 3 per centum per annum.

(c) Any obligations acquired by the Account (except special obligations issued exclusively to the Account) may be sold at the market price, and

such special obligations may be redeemed at par plus accrued interest.

(d) The interest on, and the proceeds from the sale or redemption of, any obligations held in the Account shall be credited to and form a part of the Account.

(e) All amounts credited to the Account shall be available for making payments required under this title.

(f) The Secretary of the Treasury shall include in his annual report the actuarial status of the Account.

OLD-AGE BENEFIT PAYMENTS

SEC. 202. (a) Every qualified individual (as defined in section 210) shall be entitled to receive, with respect to the period beginning on the date he attains the age of sixty-five, or on January 1, 1942, whichever is the later, and ending on the date of his death, an old-age benefit (payable as nearly as practicable in equal monthly installments) as follows:

(1) If the total wages (as defined in section 210) determined by the Board to have been paid to him, with respect to employment (as defined in section 210) after December 31, 1936, and before he attained the age of sixty-five, were not more than $3,000, the old-age benefit shall be at a monthly rate of one-half of 1 per centum of such total wages;

(2) If such total wages were more than $3,000, the old-age benefit shall be at a monthly rate equal to the sum of the following:

(A) One-half of 1 per centum of $3,000; plus

(B) One-twelfth of 1 per centum of the amount by which such total wages exceeded $3,000 and did not exceed $45,000; plus

(C) One-twenty-fourth of 1 per centum of the amount by which such total wages exceeded $45,000.

(b) In no case shall the monthly rate computed under subsection (a) exceed $85.

(c) If the Board finds at any time that more or less than the correct amount has theretofore been paid to any individual under this section, then, under regulations made by the Board, proper adjustments shall be made in connection with subsequent payments under this section to the same individual.

(d) Whenever the Board finds that any qualified individual has received wages with respect to regular employment after he attained the age of sixty-five, the old-age benefit payable to such individual shall be reduced, for each calendar month in any part of which such regular employment occurred, by an amount equal to one month's benefit. Such reduction shall be made, under regulations prescribed by the Board, by deductions from one or more payments of old-age benefit to such individual.

PAYMENTS UPON DEATH

SEC. 203. (a) If any individual dies before attaining the age of sixty-five, there shall be paid to his estate an amount equal to 3½ per centum of the total wages determined by the Board to have been paid to him, with respect to employment after December 31, 1936.

(b) If the Board finds that the correct amount of the old-age benefit payable to a qualified individual during his life under section 202 was less than 3½ per centum of the total wages by which such old-age benefit was measurable, then there shall be paid to his estate a sum equal to the amount, if any, by which such 3½ per centum exceeds the amount (whether more or less than the correct amount) paid to him during his life as old-age benefit.

(c) If the Board finds that the total amount paid to a qualified individual under an old-age benefit during his life was less than the correct amount to which he was entitled under section 202, and that the correct amount of such old-age benefit was 3½ per centum or more of the total wages by which such old-age benefit was measurable, then there shall be paid to his estate a sum equal to the amount, if any, by which the correct amount of the old-age benefit exceeds the amount which was so paid to him during his life.

PAYMENTS TO AGED INDIVIDUALS NOT QUALIFIED FOR BENEFITS

SEC. 204. (a) There shall be paid in a lump sum to any individual who, upon attaining the age of sixty-five, is not a qualified individual, an amount equal to 3½ per centum of the total wages determined by the Board to have been paid to him, with respect to employment after December 31, 1936, and before he attained the age of sixty-five.

(b) After any individual becomes entitled to any payment under subsection (a), no other payment shall be made under this title in any manner measured by wages paid to him, except that any part

of any payment under subsection (a) which is not paid to him before his death shall be paid to his estate.

AMOUNTS OF $500 OR LESS PAYABLE TO ESTATES

SEC. 205. If any amount payable to an estate under section 203 or 204 is $500 or less, such amount may, under regulations prescribed by the Board, be paid to the persons found by the Board to be entitled thereto under the law of the State in which the deceased was domiciled, without the necessity of compliance with the requirements of law with respect to the administration of such estate.

OVERPAYMENTS DURING LIFE

SEC. 206. If the Board finds that the total amount paid to a qualified individual under an old-age benefit during his life was more than the correct amount to which he was entitled under section 202, and was 3½ per centum or more of the total wages by which such old-age benefit was measurable, then upon his death there shall be repaid to the United States by his estate the amount, if any, by which such total amount paid to him during his life exceeds whichever of the following is the greater: (1) Such 3½ per centum, or (2) the correct amount to which he was entitled under section 202.

METHOD OF MAKING PAYMENTS

SEC. 207. The Board shall from time to time certify to the Secretary of the Treasury the name and address of each person entitled to receive a payment under this title, the amount of such pay-

ment, and the time at which it should be made, and the Secretary of the Treasury through the Division of Disbursement of the Treasury Department,and prior to audit or settlement by the General Acounting Office, shall make payment in acordance with the certification by the Board.

ASSIGNMENT

SEC. 208. The right of any person to any future payment under this title shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this title shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

PENALTIES

SEC. 209. Whoever in any application for any payment under this title makes any false statement as to any material fact, knowing such statement to be false, shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

DEFINITIONS

SEC. 210. When used in this title—

(a) The term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include that part of the remuneration which, after remuneration equal to $3,000 has been paid to an individual by an employer with respect to employment during any calendar year, is paid to such individual by such

employer with respect to employment during such calendar year.

(b) The term "employment" means any service, of whatever nature, performed within the United States by an employee for his employer, except—

(1) Agricultural labor;

(2) Domestic service in a private home;

(3) Casual labor not in the course of the employer's trade or business;

(4) Service performed as an officer or member of the crew of a vessel documented under the laws of the United States or of any foreign country;

(5) Service performed in the employ of the United States Government or of an instrumentality of the United States;

(6) Service performed in the employ of a State, a political subdivision thereof, or an instrumentality of one or more States or political subdivisions;

(7) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(c) The term "qualified individual" means any individual with respect to whom it appears to the satisfaction of the Board that—

(1) He is at least sixty-five years of age; and

(2) The total amount of wages paid to him, with respect to employment after December

31, 1936, and before he attained the age of sixty-five, was not less than $2,000; and

(3) Wages were paid to him, with respect to employment on some five days after December 31, 1936, and before he attained the age of sixty-five, each day being in a different calendar year.

TITLE III—GRANTS TO STATES FOR UNEMPLOYMENT COMPENSATION ADMINISTRATION

APPROPRIATION

SECTION 301. For the purpose of assisting the States in the administration of their unemployment compensation laws, there is hereby authorized to be appropriated, for the fiscal year ending June 30, 1936, the sum of $4,000,000, and for each fiscal year thereafter the sum of $49,000,000, to be used as hereinafter provided.

PAYMENTS TO STATES

SEC. 302. (a) The Board shall from time to time certify to the Secretary of the Treasury for payment to each State which has an unemployment compensation law approved by the Board under Title IX, such amounts as the Board determines to be necessary for the proper administration of such law during the fiscal year in which such payment is to be made. The Board's determination shall be based on (1) the population of the State; (2) an estimate of the number of persons covered by the State law and of the cost of proper administration of such law; and (3) such other factors as the Board finds relevant. The Board shall not cer-

tify for payment under this section in any fiscal year a total amount in excess of the amount appropriated therefor for such fiscal year.

(b) Out of the sums appropriated therefor, the Secretary of the Treasury shall, upon receiving a certification under subsection (a), pay, through the Division of Disbursement of the Treasury Department and prior to audit or settlement by the General Accounting Office, to the State agency charged with the administration of such law the amount so certified.

PROVISIONS OF STATE LAWS

SEC. 303. (a) The Board shall make no certification for payment to any State unless it finds that the law of such State, approved by the Board under Title IX, includes provisions for—

(1) Such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are found by the Board to be reasonably calculated to insure full payment of unemployment compensation when due; and

(2) Payment of unemployment compensation solely through public employment offices in the State or such other agencies as the Board may approve; and

(3) Opportunity for a fair hearing, before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied; and

(4) The payment of all money received in the unemployment fund of such State, immediately upon such receipt, to the Secretary of the Treasury to the credit of the Unemploy-

ment Trust Fund established by section 904; and

(5) Expenditure of all money requisitioned by the State agency from the Unemployment Trust Fund, in the payment of unemployment compensation, exclusive of expenses of administration; and

(6) The making of such reports, in such form and containing such information, as the Board may from time to time require, and compliance with such provisions as the Board may from time to time find necessary to assure the correctness and verification of such reports; and

(7) Making available upon request to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation, and employment status of each recipient of unemployment compensation, and a statement of such recipient's rights to further compensation under such law.

(b) Whenever the Board, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that in the administration of the law there is—

(1) a denial, in a substantial number of cases, of unemployment compensation to individuals entitled thereto under such law; or

(2) a failure to comply substantially with any provision specified in subsection (a);

the Board shall notify such State agency that further payments will not be made to the State until the Board is satisfied that there is no longer any such denial or failure to comply. Until it is so satisfied it shall make no further certification to the Secretary of the Treasury with respect to such State.

TITLE IV—GRANTS TO STATES FOR AID TO DEPENDENT CHILDREN

APPROPRIATION

SECTION 401. For the purpose of enabling each State to furnish financial assistance, as far as practicable under the conditions in such State, to needy dependent children, there is hereby authorized to be appropriated for the fiscal year ending June 30, 1936, the sum of $24,750,000, and there is hereby authorized to be appropriated for each fiscal year thereafter a sum sufficient to carry out the purposes of this title. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Board, State plans for aid to dependent children.

STATE PLANS FOR AID TO DEPENDENT CHILDREN

SEC. 402. (a) A State plan for aid to dependent children must (1) provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them; (2) provide for financial participation by the State; (3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or

designation of a single State agency to supervise the administration of the plan; (4) provide for granting to any individual, whose claim with respect to aid to a dependent child is denied, an opportunity for a fair hearing before such State agency; (5) provide such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are found by the Board to be necessary for the efficient operation of the plan; and (6) provide that the State agency will make such reports, in such form and containing such information, as the Board may from time to time require, and comply with such provisions as the Board may from time to time find necessary to assure the correctness and verification of such reports.

(b) The Board shall approve any plan which fulfills the conditions specified in subsection (a), except that it shall not approve any plan which imposes as a condition of eligibility for aid to dependent children, a residence requirement which denies aid with respect to any child residing in the State (1) who has resided in the State for one year immediately preceding the application for such aid, or (2) who was born within the State within one year immediately preceding the application, if its mother has resided in the State for one year immediately preceding the birth.

PAYMENT TO STATES

SEC. 403. (a) From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has an approved plan for aid to dependent children, for each quarter, beginning with the quarter commencing July 1, 1935, an amount,

which shall be used exclusively for carrying out the State plan, equal to one-third of the total of the sums expended during such quarter under such plan, not counting so much of such expenditure with respect to any dependent child for any month as exceeds $18, or if there is more than one dependent child in the same home, as exceeds $18 for any month with respect to one such dependent child and $12 for such month with respect to each of the other dependent children.

(b) The method of computing and paying such amounts shall be as follows:

(1) The Board shall, prior to the beginning of each quarter, estimate the amount to be paid to the State for such quarter under the provisions of subsection (a), such estimate to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than two-third of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, (B) records showing the number of dependent children in the State, and (C) such other investigation as the Board may find necessary.

(2) The Board shall then certify to the Secretary of the Treasury the amount so estimated by the Board, reduced or increased, as the case may be, by any sum by which it

finds that its estimate for any prior quarter was greater or less than the amount which should have been paid to the State for such quarter, except to the extent that such sum has been applied to make the amount certified for any prior quarter greater or less than the amount estimated by the Board for such prior quarter.

(3) The Secretary of the Treasury shall thereupon, through the Division of Disbursement of the Treasury Department and prior to audit or settlement by the General Accounting Office, pay to the State, at the time or times fixed by the Board, the amount so certified.

OPERATION OF STATE PLANS

SEC. 404. In the case of any State plan for aid to dependent children which has been approved by the Board, if the Board, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, finds—

(1) that the plan has been so changed as to impose any residence requirement prohibited by section 402 (b), or that in the administration of the plan any such prohibited requirement is imposed, with the knowledge of such State agency, in a substantial number of cases; or

(2) that in the administration of the plan there is a failure to comply substantially with any provision required by section 402 (a) to be included in the plan;

the Board shall notify such State agency that further payments will not be made to the State until the Board is satisfied that such prohibited requirement is no longer so imposed, and that there is no longer any such failure to comply. Until it is so satisfied it shall make no further certification to the Secretary of the Treasury with respect to such State.

ADMINISTRATION

SEC. 405. There is hereby authorized to be appropriated for the fiscal year ending June 30, 1936, the sum of $250,000 for all necessary expenses of the Board in administering the provisions of this title.

DEFINITIONS

SEC. 406. When used in this title—

(a) The term "dependent child" means a child under the age of sixteen who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, or aunt, in a place of residence maintained by one or more of such relatives as his or their own home;

(b) The term "aid to dependent children" means money payments with respect to a dependent child or dependent children.

TITLE V—GRANTS TO STATES FOR MATERNAL AND CHILD WELFARE

PART 1—MATERNAL AND CHILD HEALTH SERVICES

APPROPRIATION

SECTION 501. For the purpose of enabling each State to extend and improve, as far as practicable under the conditions in such State, services for promoting the health of mothers and children, especially in rural areas and in areas suffering from severe economic distress, there is hereby authorized to be appropriated for each fiscal year, beginning with the fiscal year ending June 30, 1936, the sum of $3,800,000. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Chief of the Children's Bureau, State plans for such services.

ALLOTMENTS TO STATES

SEC. 502. (a) Out of the sums appropriated pursuant to section 501 for each fiscal year the Secretary of Labor shall allot to each State $20,000, and such part of $1,800,000 as he finds that the number of live births in such State bore to the total number of live births in the United States, in the latest calendar year for which the Bureau of the Census has available statistics.

(b) Out of the sums appropriated pursuant to section 501 for each fiscal year the Secretary of Labor shall allot to the States $980,000 (in addition to the allotments made under subsection (a)), according to the financial need of each State for assistance in carrying out its State plan, as deter-

mined by him after taking into consideration the number of live births in such State.

(c) The amount of any allotment to a State under subsection (a) for any fiscal year remaining unpaid to such State at the end of such fiscal year shall be available for payment to such State under section 504 until the end of the second succeeding fiscal year. No payment to a State under section 504 shall be made out of its allotment for any fiscal year until its allotment for the preceding fiscal year has been exhausted or has ceased to be available.

APPROVAL OF STATE PLANS

SEC. 503. (a) A State plan for maternal and child-health services must (1) provide for financial participation by the State; (2) provide for the administration of the plan by the State health agency or the supervision of the administration of the plan by the State health agency; (3) provide such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are necessary for the efficient operation of the plans; (4) provide that the State health agency will make such reports, in such form and containing such information, as the Secretary of Labor may from time to time require, and comply with such provisions as he may from time to time find necessary to assure the correctness and verification of such reports; (5) provide for the extension and improvement of local maternal and child-health services administered by local child-health units; (6) provide for cooperation with medical, nursing, and welfare groups and organizations; and (7) provide for the development of

demonstration services in needy areas and among groups in special need.

(b) The Chief of the Children's Bureau shall approve any plan which fulfills the conditions specified in subsection (a) and shall thereupon notify the Secretary of Labor and the State health agency of his approval.

PAYMENT TO STATES

SEC. 504. (a) From the sums appropriated therefor and the allotments available under section 502 (a), the Secretary of the Treasury shall pay to each State which has an approved plan for maternal and child-health services, for each quarter, beginning with the quarter commencing July 1, 1935, an amount, which shall be used exclusively for carrying out the State plan, equal to one-half of the total sum expended during such quarter for carrying out such plan.

(b) The method of computing and paying such amounts shall be as follows:

(1) The Secretary of Labor shall, prior to the beginning of each quarter, estimate the amount to be paid to the State for such quarter under the provisions of subsection (a), such estimate to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than one-half of the total sum of such estimated expenditures,

the source or sources from which the difference is expected to be derived, and (B) such investigation as he may find necessary.

(2) The Secretary of Labor shall then certify the amount so estimated by him to the Secretary of the Treasury, reduced or increased, as the case may be, by any sum by which the Secretary of Labor finds that his estimate for any prior quarter was greater or less than the amount which should have been paid to the State for such quarter, except to the extent that such sum has been applied to make the amount certified for any prior quarter greater or less than the amount estimated by the Secretary of Labor for such prior quarter.

(3) The Secretary of the Treasury shall thereupon, through the Division of Disbursement of the Treasury Department and prior to audit or settlement by the General Accounting Office, pay to the State, at the time or times fixed by the Secretary of Labor, the amount so certified.

(c) The Secretary of Labor shall from time to time certify to the Secretary of the Treasury the amounts to be paid to the States from the allotments available under section 502 (b), and the Secretary of the Treasury shall, through the Division of Disbursement of the Treasury Department and prior to audit or settlement by the General Accounting Office, make payments of such amounts from such allotments at the time or times specified by the Secretary of Labor.

OPERATION OF STATE PLANS

SEC. 505. In the case of any State plan for maternal and child-health services which has been approved by the Chief of the Children's Bureau, if the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, finds that in the administration of the plan there is a failure to comply substantially with any provision required by section 503 to be included in the plan, he shall notify such State agency that further payments will not be made to the State until he is satisfied that there is no longer any such failure to comply. Until he is so satisfied he shall make no further certification to the Secretary of the Treasury with respect to such State.

PART 2—SERVICES FOR CRIPPLED CHILDREN

APPROPRIATION

SEC. 511. For the purpose of enabling each State to extend and improve (especially in rural areas and in areas suffering from severe economic distress), as far as practicable under the conditions in such State, services for locating crippled children, and for providing medical, surgical, corrective, and other services and care, and facilities for diagnosis, hospitalization, and aftercare, for children who are crippled or who are suffering from conditions which lead to crippling, there is hereby authorized to be appropriated for each fiscal year, beginning with the fiscal year ending June 30, 1936, the sum of $2,850,000. The sums made available

under this section shall be used for making payments to States which have submitted, and had approved by the Chief of the Children's Bureau, State plans for such services.

ALLOTMENTS TO STATES

SEC. 512. (a) Out of the sums appropriated pursuant to section 511 for each fiscal year the Secretary of Labor shall allot to each State $20,000, and the remainder to the States according to the need of each State as determined by him after taking into consideration the number of crippled children in such State in need of the services referred to in section 511 and the cost of furnishing such services to them.

(b) The amount of any allotment to a State under subsection (a) for any fiscal year remaining unpaid to such State at the end of such fiscal year shall be available for payment to such State under section 514 until the end of the second succeeding fiscal year. No payment to a State under section 514 shall be made out of its allotment for any fiscal year until its allotment for the preceding fiscal year has been exhausted or has ceased to be available.

APPROVAL OF STATE PLANS

SEC. 513. (a) A State plan for services for crippled children must (1) provide for financial participation by the State; (2) provide for the administration of the plan by a State agency or the supervision of the administration of the plan by a State agency; (3) provide such methods of administration (other than those relating to selection,

tenure of office, and compensation of personnel) as are necessary for the efficient operation of the plan; (4) provide that the State agency will make such reports, in such form and containing such information, as the Secretary of Labor may from time to time require, and comply with such provisions as he may from time to time find necessary to assure the correctness and verification of such reports; (5) provide for carrying out the purposes specified in section 511; and (6) provide for cooperation with medical, health, nursing, and welfare groups and organizations and with any agency in such State charged with administering State laws providing for vocational rehabilitation of physically handicapped children.

(b) The Chief of the Children's Bureau shall approve any plan which fulfills the conditions specified in subsection (a) and shall thereupon notify the Secretary of Labor and the State agency of his approval.

PAYMENT TO STATES

SEC. 514. (a) From the sums appropriated therefor and the allotments available under section 512, the Secretary of the Treasury shall pay to each State which has an approved plan for services for crippled children, for each quarter, beginning with the quarter commencing July 1, 1935, an amount, which shall be used exclusively for carrying out the State plan, equal to one-half of the total sum expended during such quarter for carrying out such plan.

(b) The method of computing and paying such amounts shall be as follows:

(1) The Secretary of Labor shall, prior to the beginning of each quarter, estimate the amount to be paid to the State for such quarter under the provisions of subsection (a), such estimate to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than one-half of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, and (B) such investigation as he may find necessary.

(2) The Secretary of Labor shall then certify the amount so estimated by him to the Secretary of the Treasury, reduced or increased, as the case may be, by any sum by which the Secretary of Labor finds that his estimate for any prior quarter was greater or less than the amount which should have been paid to the State for such quarter, except to the extent that such sum has been applied to make the amount certified for any prior quarter greater or less than the amount estimated by the Secretary of Labor for such prior quarter.

(3) The Secretary of the Treasury shall thereupon, through the Division of Disbursement of the Treasury Department and prior to audit or settlement by the General Accounting Office, pay to the State, at the time or times fixed by the Secretary of Labor, the amount so certified.

OPERATION OF STATE PLANS

SEC. 515. In the case of any State plan for services for crippled children which has been approved by the Chief of the Children's Bureau, if the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, finds that in the administration of the plan there is a failure to comply substantially with any provision required by section 513 to be included in the plan, he shall notify such State agency that further payments will not be made to the State until he is satisfied that there is no longer any such failure to comply. Until he is so satisfied he shall make no further certification to the Secretary of the Treasury with respect to such State.

PART 3—CHILD-WELFARE SERVICES

SEC. 521. (a) For the purpose of enabling the United States, through the Children's Bureau, to cooperate with State public-welfare agencies in establishing, extending, and strengthening, especially in predominantly rural areas, public-welfare services (hereinafter in this section referred to as "child-welfare services") for the protection and care of homeless, dependent, and neglected children, and children in danger of becoming delinquent, there is hereby authorized to be appropriated for each fiscal year, begininng with the fiscal year ending June 30, 1936, the sum of $1,500,000. Such amount shall be allotted by the Secretary of Labor for use by cooperating State public-welfare agencies on the basis of plans developed jointly by the State agency and the Children's Bureau, to

each State, $10,000, and the remainder to each State on the basis of such plants, not to exceed such part of the remainder as the rural population of such State bears to the total rural population of the United States. The amount so allotted shall be expended for payment of part of the cost of district, county or other local child-welfare services in areas predominantly rural, and for developing State services for the encouragement and assistance of adequate methods of community child-welfare organization in areas predominantly rural and other areas of special need. The amount of any allotment to a State under this section for any fiscal year remaining unpaid to such State at the end of such fiscal year shall be available for payment to such State under this section until the end of the second succeeding fiscal year. No payment to a State under this section shall be made out of its allotment for any fiscal year until its allotment for the preceding fiscal year has been exhausted or has ceased to be available.

(b) From the sums appropriated therefor and the allotments available under subsection (a) the Secretary of Labor shall from time to time certify to the Secretary of the Treasury the amounts to be paid to the States, and the Secretary of the Treasury shall, through the Division of Disbursement of the Treasury Department and prior to audit or settlement by the General Accounting Office, make payments of such amounts from such allotments at the time or times specified by the Secretary of Labor.

PART 4—VOCATIONAL REHABILITATION

SEC. 531. (a) In order to enable the United States to cooperate with the States and Hawaii in extending and strengthening their programs of vocational rehabilitation of the physically disabled, and to continue to carry out the provisions and purposes of the Act entitled "An Act to provide for the promotion of vocational rehabilitation of persons disabled in industry or otherwise and their return to civil employment", approved June 2, 1920, as amended (U. S. C., title 29, ch. 4; U. S. C., Supp. VII, title 29, secs. 31, 32, 34, 35, 37, 39, and 40), there is hereby authorized to be appropriated for the fiscal years ending June 30, 1936, and June 30, 1937, the sum of $841,000 for each such fiscal year in addition to the amount of the existing authorization, and for each fiscal year thereafter the sum of $1,938,000. Of the sums appropriated pursuant to such authorization for each fiscal year, $5,000 shall be apportioned to the Territory of Hawaii and the remainder shall be apportioned among the several States in the manner provided in such Act of June 2, 1920, as amended.

(b) For the administration of such Act of June 2, 1920, as amended, by the Federal agency authorized to administer it, there is hereby authorized to be appropriated for the fiscal years ending June 30, 1936, and June 30, 1937, the sum of $22,000 for each such fiscal year in addition to the amount of the existing authorization, and for each fiscal year thereafter the sum of $102,000.

PART 5—ADMINISTRATION

SEC. 541. (a) There is hereby authorized to be appropriated for the fiscal year ending June 30,

1936, the sum of $425,000, for all necessary expenses of the Children's Bureau in administering the provisions of this title, except section 531.

(b) The Children's Bureau shall make such studies and investigations as will promote the efficient administration of this title, except section 531.

(c) The Secretary of Labor shall include in his annual report to Congress a full account of the administration of this title, except section 531.

TITLE VI—PUBLIC HEALTH WORK

APPROPRIATION

SECTION 601. For the purpose of assisting States, counties, health districts, and other political subdivisions of the States in establishing and maintaining adequate public-health services, including the training of personnel for State and local health work, there is hereby authorized to be appropriated for each fiscal year, beginning with the fiscal year ending June 30, 1936, the sum of $8,000,000 to be used as hereinafter provided.

STATE AND LOCAL PUBLIC HEALTH SERVICES

SEC. 602. (a) The Surgeon General of the Public Health Service, with the approval of the Secretary of the Treasury, shall, at the beginning of each fiscal year, allot to the States the total of (1) the amount appropriated for such year pursuant to section 601; and (2) the amounts of the allotments under this section for the preceding fiscal year remaining unpaid to the States at the end of such fiscal year. The amounts of such allotments shall

be determined on the basis of (1) the population; (2) the special health problems; and (3) the financial needs; of the respective States. Upon making such allotments the Surgeon General of the Public Health Service shall certify the amounts thereof to the Secretary of the Treasury.

(b) The amount of an allotment to any State under subsection (a) for any fiscal year, remaining unpaid at the end of such fiscal year, shall be available for allotment to States under subsection (a) for the succeeding fiscal year, in addition to the amount appropriated for such year.

(c) Prior to the beginning of each quarter of the fiscal year, the Surgeon General of the Public Health Service shall, with the approval of the Secretary of the Treasury, determine in accordance with rules and regulations previously prescribed by such Surgeon General after consultation with a conference of the State and Territorial health authorities, the amount to be paid to each State for such quarter from the allotment to such State, and shall certify the amount so determined to the Secretary of the Treasury. Upon receipt of such certification, the Secretary of the Treasury shall, through the Division of Disbursement of the Treasury Department and prior to audit or settlement by the General Accounting Office, pay in accordance with such certification.

(d) The moneys so paid to any State shall be expended solely in carrying out the purposes specified in section 601, and in accordance with plans presented by the health authority of such State and approved by the Surgeon General of the Public Health Service.

INVESTIGATIONS

SEC. 603. (a) There is hereby authorized to be appropriated for each fiscal year, beginning with the fiscal year ending June 30, 1936, the sum of $2,000,000 for expenditure by the Public Health Service for investigation of disease and problems of sanitation (including the printing and binding of the findings of such investigations), and for the pay and allowances and traveling expenses of personnel of the Public Health Service, including commissioned officers, engaged in such investigations or detailed to cooperate with the health authorities of any State in carrying out the purposes specified in section 601: *Provided,* That no personnel of the Public Health Service shall be detailed to cooperate with the health authorities of any State except at the request of the proper authorities of such State.

(b) The personnel of the Public Health Service paid from any appropriation not made pursuant to subsection (a) may be detailed to assist in carrying out the purposes of this title. The appropriation from which they are paid shall be reimbursed from the appropriation made pursuant to subsection (a) to the extent of their salaries and allowances for services performed while so detailed.

(c) The Secretary of the Treasury shall include in his annual report to Congress a full account of the administration of this title.

TITLE VII—SOCIAL SECURITY BOARD

ESTABLISHMENT

SECTION 701. There is hereby established a Social Security Board (in this Act referred to as the

"Board") to be composed of three members to be appointed by the President, by and with the advice and consent of the Senate. During his term of membership on the Board, no member shall engage in any other business, vocation, or employment. not more than two of the members of the Board shall be members of the same political party. Each member shall receive a salary at the rate of $10,000 a year and shall hold office for a term of six years, except that (1) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed, shall be appointed for the remainder of such term; and (2) the terms of office of the members first taking office after the date of the enactment of this Act shall expire, as designated by the President at the time of appointment, one at the end of two years, one at the end of four years, and one at the end of six years, after the date of the enactment of this Act. The President shall designate one of the members as the chairman of the Board.

DUTIES OF SOCIAL SECURITY BOARD

SEC. 702. The Board shall perform the duties imposed upon it by this Act and shall also have the duty of studying and making recommendations as to the most effective methods of providing economic security through social insurance, and as to legislation and matters of administrative policy concerning old-age pensions, unemployment compensation, accident compensation, and related subjects.

EXPENSES OF THE BOARD

SEC. 703. The Board is authorized to appoint and fix the compensation of such officers and employees, and to make such expenditures, as may be necessary for carrying out its functions under this Act. Appointments of attorneys and experts may be made without regard to the civil-service laws.

SEC. 704. The Board shall make a full report to Congress, at the beginning of each regular session, of the administration of the functions with which it is charged.

TITLE VIII—TAXES WITH RESPECT TO EMPLOYMENT

INCOME TAX ON EMPLOYEES

SECTION 801. In addition to other taxes, there shall be levied, collected, and paid upon the income of every individual a tax equal to the following percentages of the wages (as defined in section 811) received by him after December 31, 1936, with respect to employment (as defined in section 811) after such date:

(1) With respect to employment during the calendar years 1937, 1938, and 1939, the rate shall be 1 per centum.

(2) With respect to employment during the calendar years 1940, 1941, and 1942, the rate shall be 1½ per centum.

(3) With respect to employment during the calendar years 1943, 1944, and 1945, the rate shall be 2 per centum.

(4) With respect to employment during the calendar years 1946, 1947, and 1948, the rate shall be 2½ per centum.

(5) With respect to employment after December 31, 1948, the rate shall be 3 per centum.

DEDUCTION OF TAX FROM WAGES

SEC. 802. (a) The tax imposed by section 801 shall be collected by the employer of the taxpayer, by deducting the amount of the tax from the wages as and when paid. Every employer required so to deduct the tax is hereby made liable for the payment of such tax, and is hereby indemnified against the claims and demands of any person for the amount of any such payment made by such employer.

(b) If more or less than the correct amount of tax imposed by section 801 is paid with respect to any wage payment, then, under regulations made under this title, proper adjustments, with respect both to the tax and the amount to be deducted, shall be made, without interest, in connection with subsequent wage payments to the same individual by the same employer.

DEDUCTIBILITY FROM INCOME TAX

SEC. 803. For the purposes of the income tax imposed by Title I of the Revenue Act of 1934 or by any Act of Congress in substitution therefor, the tax imposed by section 801 shall not be allowed as a deduction to the taxpayer in computing his net income for the year in which such tax is deducted from his wages.

EXCISE TAX ON EMPLOYERS

SEC. 804. In addition to other taxes, every employer shall pay an excise tax, with respect to hav-

ing individuals in his employ, equal to the following percentages of the wages (as defined in section 811) paid by him after December 31, 1936, with respect to employment (as defined in section 811) after such date:

(1) With respect to employment during the calendar years 1937, 1938, and 1939, the rate shall be 1 per centum.

(2) With respect to employment during the calendar years 1940, 1941, and 1942, the rate shall be 1½ per centum.

(3) With respect to employment during the calendar years 1943, 1944, and 1945, the rate shall be 2 per centum.

(4) With respect to employment during the calendar years 1946, 1947, and 1948, the rate shall be 2½ per centum.

(5) With respect to employment after December 31, 1948, the rate shall be 3 per centum.

ADJUSTMENT OF EMPLOYERS' TAX

SEC. 805. If more or less than the correct amount of tax imposed by section 804 is paid with respect to any wage payment, then, under regulations made under this title, proper adjustments with respect to the tax shall be made, without interest, in connection with subsequent wage payments to the same individual by the same employer.

REFUNDS AND DEFICIENCIES

SEC. 806. If more or less than the correct amount of tax imposed by section 801 or 804 is paid or deducted with respect to any wage payment and the overpayment or underpayment of tax cannot

be adjusted under section 802 (b) or 805 the amount of the overpayment shall be refunded and the amount of the underpayment shall be collected, in such manner and at such times (subject to the statutes of limitations properly applicable thereto) as may be prescribed by regulations made under this title.

COLLECTION AND PAYMENT OF TAXES

SEC. 807. (a) The taxes imposed by this title shall be collected by the Bureau of Internal Revenue under the direction of the Secretary of the Treasury and shall be paid into the Treasury of the United States as internal-revenue collections. If the tax is not paid when due, there shall be added as part of the tax interest (except in the case of adjustments made in accordance with the provisions of sections 802 (b) and 805) at the rate of one-half of 1 per centum per month from the date the tax became due until paid.

(b) Such taxes shall be collected and paid in such manner, at such times, and under such conditions, not inconsistent with this title (either by making and filing returns, or by stamps, coupons, tickets, books, or other reasonable devices or methods necessary or helpful in securing a complete and proper collection and payment of the tax or in securing proper identification of the taxpayer), as may be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury.

(c) All provisions of law, including penalties, applicable with respect to any tax imposed by section 600 or section 800 of the Revenue Act of 1926, and the provisions of section 607 of the Revenue

Act of 1934, shall, insofar as applicable and not inconsistent with the provisions of this title, be applicable with respect to the taxes imposed by this title.

(d) In the payment of any tax under this title a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

RULES AND REGULATIONS

SEC. 808. The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall make and publish rules and regulations for the enforcement of this title.

SALE OF STAMPS BY POSTMASTERS

SEC. 809. The Commissioner of Internal Revenue shall furnish to the Postmaster General without prepayment a suitable quantity of stamps, coupons, tickets, books, or other devices prescribed by the Commissioner under section 807 for the collection or payment of any tax imposed by this title, to be distributed to, and kept on sale by, all post offices of the first and second classes, and such post offices of the third and fourth classes as (1) are located in county seats, or (2) are certified by the Secretary of the Treasury to the Postmaster General as necessary to the proper administration of this title. The Postmaster General may require each such postmaster to furnish bond in such increased amount as he may from time to time determine, and each such postmaster shall deposit the receipts from the sale of such stamps, coupons, tickets, books, or other devices, to the credit of,

and render accounts to, the Postmaster General at such times and in such form as the Postmaster General may by regulations prescribe. The Postmaster General shall at least once a month transfer to the Treasury as internal-revenue collection all receipts so deposited together with a statement of the additional expenditures in the District of Columbia and elsewhere incurred by the Post Office Department in performing the duties imposed upon said Department by this Act, and the Secretary of the Treasury is hereby authorized and directed to advance from time to time to the credit of the Post Office Department from appropriations made for the collection of the taxes imposed by this title, such sums as may be required for such additional expenditures incurred by the Post Office Department.

PENALTIES

SEC. 810. (a) Whoever buys, sells, offers for sale, uses, transfers, takes or gives in exchange, or pledges or gives in pledge, except as authorized in this title or in regulations made pursuant thereto, any stamp, coupon, ticket, book, or other device, prescribed by the Commissioner of Internal Revenue under section 807 for the collection of payment of any tax imposed by this title, shall be fined not more than $1,000 or imprisoned for not more than six months, or both.

(b) Whoever, with intent to defraud, alters, forges, makes, or counterfeits any stamp, coupon, ticket, book, or other device prescribed by the Commissioner of Internal Revenue under section 807 for the collection or payment of any tax imposed by this title, or uses, sells, lends, or has in his pos-

session any such altered, forged, or counterfeited stamp, coupon, ticket, book, or other device, or makes, uses, sells, or has in his possession any material in imitation of the material used in the manufacture of such stamp, coupon, ticket, book, or other device, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

DEFINITIONS

SEC. 811. When used in this title—

(a) The term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include that part of the remuneration which, after remuneration equal to $3,000 has been paid to an individual by an employer with respect to employment during any calendar year, is paid to such individual by such employer with respect to employment during such calendar year.

(b) The term "employment" means any service, of whatever nature, performed within the United States by an employee for his employer, except—

(1) Agricultural labor;

(2) Domestic service in a private home;

(3) Casual labor not in the course of the employer's trade or business;

(4) Service performed by an individual who has attained the age of sixty-five;

(5) Service performed as an officer or member of the crew of a vessel documented under the laws of the United States or of any foreign country;

(6) Service performed in the employ of the United States Government or of an instrumentality of the United States;

(7) Service performed in the employ of a State, a political subdivision thereof, or an instrumentality of one or more States or political subdivisions;

(8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

TITLE IX—TAX ON EMPLOYERS OF EIGHT OR MORE

IMPOSITION OF TAX

SECTION 901. On and after January 1, 1936, every employer (as defined in section 907) shall pay for each calendar year an excise tax, with respect to having individuals in his employ, equal to the following percentages of the total wages (as defined in section 907) payable by him (regardless of the time of payment) with respect to employment (as defined in section 907) during such calendar year:

(1) With respect to employment during the calendar year 1936 the rate shall be 1 per centum;

(2) With respect to employment during the calendar year 1937 the rate shall be 2 per centum;

(3) With respect to employment after December 31, 1937, the rate shall be 3 per centum.

CREDIT AGAINST TAX

SEC. 902. The taxpayer may credit against the tax imposed by section 901 the amount of contributions, with respect to employment during the taxable year, paid by him (before the date of filing his return for the taxable year) into an unemployment fund under a State law. The total credit allowed to a taxpayer under this section for all contributions paid into unemployment funds with respect to employment during such taxable year shall not exceed 90 per centum of the tax against which it is credited, and credit shall be allowed only for contributions made under the laws of States certified for the taxable year as provided in section 903.

CERTIFICATION OF STATE LAWS

SEC. 903. (a) The Social Security Board shall approve any State law submitted to it, within thirty days of such submission, which it finds provides that—

(1) All compensation is to be paid through public employment offices in the State or such other agencies as the Board may approve;

(2) No compensation shall be payable with respect to any day of unemployment occurring within two years after the first day of the first period with respect to which contributions are required;

(3) All money received in the unemployment fund shall immediately upon such receipt be paid over to the Secretary of the Treasury to the credit of the Unemployment Trust Fund established by section 904;

(4) All money withdrawn from the Unemployment Trust Fund by the State agency shall be used solely in the payment of compensation, exclusive of expenses of administration;

(5) Compensation shall not be denied in such State to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (A) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; (B) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (C) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona-fide labor organization;

(6) All the rights, privileges, or immunities conferred by such law or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal such law at any time.

The Board shall, upon approving such law, notify the Governor of the State of its approval.

(b) On December 31 in each taxable year the Board shall certify to the Secretary of the Treasury each State whose law it has previously approved, except that it shall not certify any State which, after reasonable notice and opportunity for hearing to the State agency, the Board finds has changed its law so that it no longer contains the provisions specified in subsection (a) or has with respect to such taxable year failed to comply substantially with any such provision.

(c) If, at any time during the taxable year, the Board has reason to believe that a State whose law it has previously approved, may not be certified under subsection (b), it shall promptly so notify the Governor of such State.

UNEMPLOYMENT TRUST FUND

SEC. 904. (a) There is hereby established in the Treasury of the United States a trust fund to be known as the Unemployment Trust Fund, hereinafter in this title called the Fund. The Secretary of the Treasury is authorized and directed to receive and hold in the Fund all moneys deposited therein by a State agency from a State unemployment fund. Such deposit may be made directly with the Secretary of the Treasury or with any Federal reserve bank or member bank of the Federal Reserve System designated by him for such purpose.

(b) It shall be the duty of the Secretary of the Treasury to invest such portion of the Fund as is not, in his judgment, required to meet current withdrawals. Such investment may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at par, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under the Second Liberty Bond Act, as amended, are hereby extended to authorize the issuance at par of special obligations exclusively to the Fund. Such special obligations shall bear interest at a rate equal to the average rate of interest,

computed as of the end of the calendar month next preceding the date of such issue, borne by all interest-bearing obligations of the United States then forming part of the public debt; except that where such average rate is not a multiple of one-eighth of 1 per centum, the rate of interest of such special obligations shall be the multiple of one-eighth of 1 per centum next lower than such average rate. Obligations other than such special obligations may be acquired for the Fund only on such terms as to provide an investment yield not less than the yield which would be required in the case of special obligations if issued to the Fund upon the date of such acquisition.

(c) Any obligations acquired by the Fund (except special obligations issued exclusively to the Fund) may be sold at the market price, and such special obligations may be redeemed at par plus accrued interest.

(d) The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to and form a part of the Fund.

(e) The Fund shall be invested as a single fund, but the Secretary of the Treasury shall maintain a separate book account for each State agency and shall credit quarterly on March 31, June 30, September 30, and December 31, of each year, to each account, on the basis of the average daily balance of such account, a proportionate part of the earnings of the Fund for the quarter ending on such date.

(f) The Secretary of the Treasury is authorized and directed to pay out of the Fund to any State agency such amount as it may duly requisition, not

exceeding the amount standing to the account of such State agency at the time of such payment.

ADMINISTRATION, REFUNDS, AND PENALTIES

SEC. 905. (a) The tax imposed by this title shall be collected by the Bureau of Internal Revenue under the direction of the Secretary of the Treasury and shall be paid into the Treasury of the United States as internal-revenue collections. If the tax is not paid when due, there shall be added as part of the tax interest at the rate of one-half of 1 per centum per month from the date the tax became due until paid.

(b) Not later than January 31, next following the close of the taxable year, each employer shall make a return of the tax under this title for such taxable year. Each such return shall be made under oath, shall be filed with the collector of internal revenue for the district in which is located the principal place of business of the employer, or, if he has no principal place of business in the United States, then with the collector at Baltimore, Maryland, and shall contain such information and be made in such manner as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulations prescribe. All provisions of law (including penalties) applicable in respect of the taxes imposed by section 600 of the Revenue Act of 1926, shall, insofar as not inconsistent with this title, be applicable in respect of the tax imposed by this title. The Commissioner may extend the time for filing the return of the tax imposed by this title, under such rules and regulations as he may prescribe with the approval

of the Secretary of the Treasury, but no such extension shall be for more than sixty days.

(c) Returns filed under this title shall be open to inspection in the same manner, to the same extent, and subject to the same provisions of law, including penalties, as returns made under Title II of the Revenue Act of 1926.

(d) The taxpayer may elect to pay the tax in four equal installments instead of in a single payment, in which case the first installment shall be paid not later than the last day prescribed for the filing of returns, the second installment shall be paid on or before the last day of the third month, the third installment on or before the last day of the sixth month, and the fourth installment on or before the last day of the ninth month, after such last day. If the tax or any installment thereof is not paid on or before the last day of the period fixed for its payment, the whole amount of the tax unpaid shall be paid upon notice and demand from the collector.

(e) At the request of the taxpayer the time for payment of the tax or any installment thereof may be extended under regulations prescribed by the Commissioner with the approval of the Secretary of the Treasury, for a period not to exceed six months from the last day of the period prescribed for the payment of the tax or any installment thereof. The amount of the tax in respect of which any extension is granted shall be paid (with interest at the rate of one-half of 1 per centum per month) on or before the date of the expiration of the period of the extension.

(f) In the payment of any tax under this title a fractional part of a cent shall be disregarded un-

less it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

INTERSTATE COMMERCE

SEC. 906. No person required under a State law to make payments to an unemployment fund shall be relieved from compliance therewith on the ground that he is engaged in interstate commerce, or that the State law does not distinguish between employees engaged in interstate commerce and those engaged in intrastate commerce.

DEFINITIONS

SEC. 907. When used in this title—

(a) The term "employer" does not include any person unless on each of some twenty days during the taxable year, each day being in a different calendar week, the total number of individuals who were in his employ for some portion of the day (whether or not at the same moment of time) was eight or more.

(b) The term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash.

(c) The term "employment" means any service, of whatever nature, performed within the United States by an employee for his employer, except—

(1) Agricultural labor;

(2) Domestic service in a private home;

(3) Service performed as an officer or member of a crew of a vessel on the navigable waters of the United States;

(4) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of

twenty-one in the employ of his father or mother;

(5) Service performed in the employ of the United States Government or of an instrumentality of the United States;

(6) Service performed in the employ of a State, a political subdivision thereof, or an instrumentality of one or more States or political subdivisions;

(7) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(d) The term "State agency" means any State officer, board, or other authority, designated under a State law to administer the unemployment fund in such State.

(e) The term "unemployment fund" means a special fund, established under a State law and administered by a State agency, for the payment of compensation.

(f) The term "contributions" means payments required by a State law to be made by an employer into an unemployment fund, to the extent that such payments are made by him without any part thereof being deducted or deductible from the wages of individuals in his employ.

(g) The term "compensation" means cash benefits payable to individuals with respect to their unemployment.

RULES AND REGULATIONS

SEC. 908. The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall make and publish rules and regulations for the enforcement of this title, except sections 903, 904, and 910.

ALLOWANCE OF ADDITIONAL CREDIT

SEC. 909. (a) In addition to the credit allowed under section 902, a taxpayer may, subject to the conditions imposed by section 910, credit against the tax imposed by section 901 for any taxable year after the taxable year 1937, an amount, with respect to each State law, equal to the amount, if any, by which the contributions, with respect to employment in such taxable year, actually paid by the taxpayer under such law before the date of filing his return for such taxable year, is exceeded by whichever of the following is the lesser—

(1) The amount of contributions which he would have been required to pay under such law for such taxable year if he had been subject to the highest rate applicable from time to time throughout such year to any employer under such law; or

(2) Two and seven-tenths per centum of the wages payable by him with respect to employment with respect to which contributions for such year were required under such law.

(b) If the amount of the contributions actually so paid by the taxpayer is less than the amount which he should have paid under the State law, the additional credit under subsection (a) shall be reduced proportionately.

(c) The total credits allowed to a taxpayer under this title shall not exceed 90 per centum of the tax against which such credits are taken.

CONDITIONS OF ADDITIONAL CREDIT ALLOWANCE

SEC. 910. (a) A taxpayer shall be allowed the additional credit under section 909, with respect to his contribution rate under a State law being lower, for any taxable year, than that of another employer subject to such law, only if the Board finds that under such law—

(1) Such lower rate, with respect to contributions to a pooled fund, is permitted on the basis of not less than three years of compensation experience;

(2) Such lower rate, with respect to contributions to a guaranteed employment account, is permitted only when his guaranty of employment was fulfilled in the preceding calendar year, and such guaranteed employment account amounts to not less than 7½ per centum of the total wages payable by him, in accordance with such guaranty, with respect to employment in such State in the preceding calendar year;

(3) Such lower rate, with respect to contributions to a separate reserve account, is permitted only when (A) compensation has been payable from such account throughout the preceding calendar year, and (B) such account amounts to not less than five times the largest amount of compensation paid from such account within any one of the three preceding calendar years, and (C) such accounts amounts

to not less than 7½ per centum of the total wages payable by him (plus the total wages payable by any other employers who may be contributing to such account) with respect to employment in such State in the preceding calendar year.

(b) Such additional credit shall be reduced, if any contributions under such law are made by such taxpayer at a lower rate under conditions not fulfilling the requirements of subsection (a), by the amount bearing the same ratio to such additional credit as the amount of contributions made at such lower rate bears to the total of his contributions paid for such year under such law.

(c) As used in this section—

(1) The term "reserve account" means a separate account in an unemployment fund, with respect to an employer or group of employers, from which compensation is payable only with respect to the unemployment of individuals who were in the employ of such employer, or of one of the employers comprising the group.

(2) The term "pooled fund" means an unemployment fund or any part thereof in which all contributions are mingled and undivided, and from which compensation is payable to all eligible individuals, except that to individuals last employed by employers with respect to whom reserve accounts are maintained by the State agency, it is payable only when such accounts are exhausted.

(3) The term "guaranteed employment account" means a separate account, in an unem-

ployment fund, of contributions paid by an employer (or group of employers) who

(A) guarantees in advance thirty hours of wages for each of forty calendar weeks (or more, with one weekly hour deducted for each added week guaranteed) in twelve months, to all the individuals in his employ in one or more distinct establishments, except that any such individual's guaranty may commence after a probationary period (included within twelve or less consecutive calendar weeks), and

(B) gives security or assurance, satisfactory to the State agency, for the fulfillment of such guaranties,

from which account compensation shall be payable with respect to the unemployment of any such individual whose guaranty is not fulfilled or renewed and who is otherwise eligible for compensation under the State law.

(4) The term "year of compensation experience", as applied to an employer, means any calendar year throughout which compensation was payable with respect to any individual in his employ who became unemployed and was eligible for compensation.

TITLE X—GRANTS TO STATES FOR AID TO THE BLIND

APPROPRIATION

SECTION 1001. For the purpose of enabling each State to furnish financial assistance, as far as practicable under the conditions in such State, to needy individuals who are blind, there is hereby author-

ized to be appropriated for the fiscal year ending June 30, 1936, the sum of $3,000,000, and there is hereby authorized to be appropriated for each fiscal year thereafter a sum sufficient to carry out the purposes of this title. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Social Security Board, State plans for aid to the blind.

STATE PLANS FOR AID TO THE BLIND

SEC. 1002. (a) A State plan for aid to the blind must (1) provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them; (2) provide for financial participation by the State; (3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan; (4) provide for granting to any individual, whose claim for aid is denied, an opportunity for a fair hearing before such State agency; (5) provide such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are found by the Board to be necessary for the efficient operation of the plan; (6) provide that the State agency will make such reports, in such form and containing such information, as the Board may from time to time require, and comply with such provisions as the Board may from time to time find necessary to assure the correctness and verification of such reports; and (7) provide that no aid will be fur-

nished any individual under the plan with respect to any period with respect to which he is receiving old-age assistance under the State plan approved under section 2 of this Act.

(b) The Board shall approve any plan which fulfills the conditions specified in subsection (a), except that it shall not approve any plan which imposes, as a condition of eligibility for aid to the blind under the plan—

(1) Any residence requirement which excludes any resident of the State who has resided therein five years during the nine years immediately preceding the application for aid and has resided therein continuously for one year immediately preceding the application; or

(2) Any citizenship requirement which excludes any citizen of the United States.

PAYMENT TO STATES

SEC. 1003. (a) From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has an approved plan for aid to the blind, for each quarter, beginning with the quarter commencing July 1, 1935, (1) an amount, which shall be used exclusively as aid to the blind, equal to one-half of the total of the sums expended during such quarter as aid to the blind under the State plan with respect to each individual who is blind and is not an inmate of a public institution, not counting so much of such expenditure with respect to any individual for any month as exceeds $30, and (2) 5 per centum of such amount, which shall be used for paying the costs of administering

the State plan or for aid to the blind, or both, and for no other purpose.

(b) The method of computing and paying such amounts shall be as follows:

(1) The Board shall, prior to the beginning of each quarter, estimate the amount to be paid to the State for such quarter under the provisions of clause (1) of subsection (a), such estimate to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such clause, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than one-half of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, (B) records showing the number of blind individuals in the State, and (C) such other investigation as the Board may find necessary.

(2) The Board shall then certify to the Secretary of the Treasury the amount so estimated by the Board, reduced or increased, as the case may be, by any sum by which it finds that its estimate for any prior quarter was greater or less than the amount which should have been paid to the State under clause (1) of subsection (a) for such quarter, except to the extent that such sum has been applied to make the amount certified for any prior quarter greater or less than the amount estimated by the Board for such prior quarter.

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(3) The Secretary of the Treasury shall thereupon, through the Division of Disbursement of the Treasury Department and prior to audit or settlement by the General Accounting Office, pay to the State, at the time or times fixed by the Board, the amount so certified, increased by 5 per centum.

OPERATION OF STATE PLANS

SEC. 1004. In the case of any State plan for aid to the blind which has been approved by the Board, if the Board, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, finds—

(1) that the plan has been so changed as to impose any residence or citizenship requirement prohibited by section 1002 (b), or that in the administration of the plan any such prohibited requirement is imposed, with the knowledge of such State agency, in a substantial number of cases; or

(2) that in the administration of the plan there is a failure to comply substantially with any provision required by section 1002 (a) to be included in the plan;

the Board shall notify such State agency that further payments will not be made to the State until the Board is satisfied that such prohibited requirement is no longer so imposed, and that there is no longer any such failure to comply. Until it is so satisfied it shall make no further certification to the Secretary of the Treasury with respect to such State.

ADMINISTRATION

SEC. 1005. There is hereby authorized to be appropriated for the fiscal year ending June 30, 1936, the sum of $30,000, for all necessary expenses of the Board in administering the provisions of this title.

DEFINITION

SEC. 1006. When used in this title the term "aid to the blind" means money payments to blind individuals.

TITLE XI—GENERAL PROVISIONS

DEFINITIONS

SECTION 1101. (a) When used in this Act—

(1) The term "State" (except when used in section 531) includes Alaska, Hawaii, and the District of Columbia.

(2) The term "United States" when used in a geographical sense means the States, Alaska, Hawaii, and the District of Columbia.

(3) The term "person" means an individual, a trust or estate, a partnership, or a corporation.

(4) The term "corporation" includes associations, joint-stock companies, and insurance companies.

(5) The term "shareholder" includes a member in an association, joint-stock company, or insurance company.

(6) The term "employee" includes an officer of a corporation.

(b) The terms "includes" and "including" when used in a definition contained in this Act shall not be deemed to exclude other things otherwise within the meaning of the term defined.

(c) Whenever under this Act or any Act of Congress, or under the law of any State, an employer is required or permitted to deduct any amount from the remuneration of an employee and to pay the amount deducted to the United States, a State, or any political subdivision thereof, then for the purposes of this Act the amount so deducted shall be considered to have been paid to the employee at the time of such deduction.

(d) Nothing in this Act shall be construed as authorizing any Federal official, agent, or representative, in carrying out any of the provisions of this Act, to take charge of any child over the objection of either of the parents of such child, or of the person standing in loco parentis to such child.

RULES AND REGULATIONS

SEC. 1102. The Secretary of the Treasury, the Secretary of Labor, and the Social Security Board, respectively, shall make and publish such rules and regulations, not inconsistent with this Act, as may be necessary to the efficient administration of the functions with which each is charged under this Act.

SEPARABILITY

SEC. 1103. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances shall not be affected thereby.

RESERVATION OF POWER

SEC. 1104. The right to alter, amend, or repeal any provision of this Act is hereby reserved to the Congress.

SHORT TITLE

SEC. 1105. This Act may be cited as the "Social Security Act."

Approved, August 14, 1935.

APPENDIX B

TABLE 1

Distribution of wealth and income in the United States, 1910[1]

Wealth-holding Class	Percentage distribution of the population	Percentage distribution of total incomes received by class	Average income per capita, entire United States
All classes	100	100	$332
Poorest	65	38.6	197
Lower Middle class	15	14.2	314
Upper Middle class	18	26.8	498
Richest	2	20.4	3,396

[1] Source: King, Willford I., "The Wealth and Income of the People of the United States," 1915, p. 235.

TABLE 2

Percentage Distribution of Personal Incomes, by Economic Classes, in 1918[1]

Income Class	Percentage Distribution[2]		Cumulative Percentage Distribution[2]	
	Number of Persons	Amount of Income	Number of Persons under Class above	Amount of Income under Class above
Total	100.0	100.0	.....	.....
Under zero	0.53	−0.22	0.53	−0.22
$0 to $1,000	38.22	18.12	38.75	17.90
$1,000 to $2,000	47.17	41.79	85.92	59.69
$2,000 to $3,000	8.16	12.62	94.08	72.31
$3,000 to $5,000	3.68	8.93	97.76	81.24
$5,000 and over	.....	.....	100.00	100.00

[1] Source: "Income in the United States, its Amount and Distribution 1909-1919," by the staff of the National Bureau of Economic Research, Inc., Vol. I, p. 137. (For detailed distribution see Table — in Appendix).

[2] Excluding 2,500,000 soldiers, sailors, and marines.

TABLE 3

Estimated distribution of national income among individual recipients, 1928 [1]

Income	Number of Individual Income Recipients	Total Income [2]	Average Income per Recipient
All Incomes	46, 704, 275	$84, 803, 658	$1, 816
Under $1,000	19, 014, 000	7, 463, 600	745
$1,000–$2,000	27, 542, 000	39, 468, 200	1, 433
$2,000–$3,000	6, 629, 000	15, 484, 300	2, 335
$3,000–$5,000	1, 397, 000	5, 210, 900	3, 730
$5,000 and over	1, 122, 275	17, 176, 698	15, 296

[1] Source: Data compiled by W. K. King, published in "The Ability to Pay for Medical Care", by Louis S. Reed, Committee on the Costs of Medical Care, 1933, p. 10; and Bader, Louis, "The American Family Income and Prosperity," *Journal of the American Statistical Association*, Vol. XXVIII, No. 182, pp. 303-311, June 1933, p. 303.

[2] From unpublished data by Williford I. King; Bader, loc. cit., p. 303. Total income excludes imputed income for value of services of durable goods such as homes, automobiles, etc.

TABLE 4

Cumulative percent Distribution of Income Recipients and Incomes in Specified Income Groups in 1928 [1]

Income Group	Cumulative Percentages	
	Number of Recipients	Income Received
Under $1,000	21.4	8.8
Under $2,000	80.4	55.8
Under $3,000	94.6	74.0
Under $5,000	97.6	80.1
$5,000 and over	100.0	100.0

[1] Source: Bader, Louis, loc. cit., p. 304.

TABLE 5

Estimated distribution of families according to amount of annual income, 1928 [1]

Income	Families		
	Number	Percent	Cumulative, percent
All incomes	29,000,000	100.0	
Under $1,000	4,060,000	14.0	14.0
$1,000–$1,200	2,117,000	7.3	21.3
$1,200–$1,400	2,610,000	9.0	30.3
$1,400–$1,600	2,784,000	9.6	39.9
$1,600–$1,800	2,407,000	8.3	48.2
$1,800–$2,000	2,059,000	7.1	55.3
$2,000–$2,500	3,712,000	12.8	68.1
$2,500–$3,000	2,523,000	8.7	76.8
$3,000–$4,000	3,074,000	10.6	87.4
$4,000–$5,000	986,000	3.4	90.8
$5,000–$10,000	1,885,000	6.5	97.3
$10,000 and over	783,000	2.7	100.0

[1] Source: Estimate by Maurice Leven for the Committee on the Costs of Medical Care, in "The Ability to Pay for Medical Care," loc. cit., pp. 11 and 99–101. "The families are 'census' families and include approximately 2,286,000 households of one person. In addition to the families distributed here, there were in 1928, approximately 6,400,000 gainful workers outside the family units as designated by the census."

TABLE 6

Estimated number of non-farm families by income classes, 1929 [1]

Income class	Families		
	Number	Percentage distribution	Cumulative, percent
All classes	21,674,000	100.0	
Under $1,000	2,735,000	12.62	12.63
$1,000 to $1,500	4,749,000	21.91	34.53
$1,500 to $2,000	4,094,000	18.89	53.42
$2,000 to $2,500	2,811,000	12.97	66.39
$2,500 to $3,000	1,767,000	8.15	74.54
$3,000 to $3,500	1,312,000	6.05	80.59
$3,500 to $4,000	898,000	4.14	84.73
Over $4,000	3,308,000	15.27	100.00

[1] Source: America's Capacity to Consume, 1934, p. 261.

TABLE 7

Unemployment in manufacturing, transportation, building trades, and mining, 1897–1926 [1]

Year	Percentage Unemployed	Year	Percentage unemployed	Year	Percentage Unemployed
1897	18.0	1907	6.9	1917	6.0
1898	16.9	1908	16.4	1918	5.5
1899	10.5	1909	8.9	1919	6.9
1900	10.0	1910	7.2	1920	7.2
1901	7.5	1911	9.4	1921	23.1
1902	6.8	1912	7.0	1922	18.3
1903	7.0	1913	8.2	1923	7.9
1904	10.1	1914	16.4	1924	12.0
1905	6.7	1915	15.5	1925	8.9
1906	5.9	1916	6.3	1926	7.5

[1] Source: Douglas, Paul H. and Director, Aaron, "The Problem of Unemployment," 1931, p. 28.

TABLE 8

Estimates of average percentages of nonagricultural unemployment, nationally and by States

State	Percent of Gainful Workers Unemployed				
	1930-33 average	1930	1931	1932	1933
United States	25.8	12.1	23.2	34.5	33.2
Alabama	23.2	10.4	20.2	33.9	29.1
Arizona	27.7	11.7	24.2	35.7	38.6
Arkansas	25.6	9.5	18.5	36.9	39.2
California	24.0	12.7	23.9	29.9	29.2
Colorado	25.1	11.7	20.7	32.8	35.3
Connecticut	26.4	12.0	24.3	37.5	31.7
Delaware	18.3	9.3	20.9	26.3	16.7
District of Columbia	13.2	5.8	12.7	19.1	15.0
Florida	27.1	12.2	23.0	36.4	36.6
Georgia	17.0	9.0	18.3	28.1	12.6
Idaho	21.8	10.5	19.0	29.3	28.5
Illinois	28.0	13.8	24.8	37.5	35.7
Indiana	26.6	12.3	23.6	37.3	33.4
Iowa	21.8	8.5	18.5	29.5	31.0
Kansas	21.0	9.3	19.9	28.0	26.9
Kentucky	20.8	11.7	20.8	28.4	22.7
Louisiana	24.1	11.2	22.3	32.5	30.6
Maine	21.8	12.0	23.4	31.6	20.3
Maryland	23.4	9.6	21.4	33.0	29.4
Massachusetts	27.0	13.2	24.7	35.0	34.8
Michigan	34.3	18.0	29.7	43.1	45.9
Minnesota	23.4	11.5	22.1	29.8	30.3
Mississippi	19.4	10.0	16.5	27.7	25.1

TABLE 8—Continued

Estimates of average percentages of nonagricultural unemployment, nationally and by States—Continued

State	Percent of Gainful Workers Unemployed				
	1930-33 average	1930	1931	1932	1933
Missouri	24.2	11.1	21.8	32.5	31.5
Montana	28.4	13.7	23.0	40.7	36.4
Nebraska	21.5	8.8	18.7	28.5	30.2
Nevada	27.8	13.5	26.2	35.7	35.4
New Hampshire	21.8	12.0	24.0	29.8	21.3
New Jersey	25.8	13.2	25.5	37.1	38.8
New Mexico	26.2	10.7	20.7	34.8	38.3
New York	27.8	12.4	24.0	36.4	38.1
North Carolina	21.3	11.8	22.6	32.3	18.4
North Dakota	18.9	9.4	17.8	21.8	27.3
Ohio	26.9	13.3	24.8	37.3	32.2
Oklahoma	24.2	11.2	23.3	33.2	28.2
Oregon	21.7	13.5	24.3	27.8	21.3
Pennsylvania	28.8	11.8	23.5	37.3	40.2
Rhode Island	29.7	15.3	27.0	39.4	36.6
South Carolina	17.2	8.6	18.3	29.3	12.9
South Dakota	17.5	7.0	16.6	23.9	22.7
Tennessee	20.4	9.8	19.7	29.8	22.6
Texas	24.0	10.2	21.4	32.8	31.6
Utah	25.7	11.8	22.7	33.9	34.3
Vermont	24.1	11.2	23.0	31.3	30.9
Virginia	21.1	9.2	19.4	30.7	25.6
Washington	24.4	12.1	23.1	31.4	30.7
West Virginia	23.2	10.1	21.3	32.0	29.4
Wisconsin	23.8	11.6	22.9	32.2	25.8
Wyoming	24.2	9.3	19.1	34.4	33.9

Source: Committee on Economic Security. See Report of the Committee to the President, Jan. 15, 1935, pp. 61, 62, table 6.

TABLE 9

Average wages in specified industries, 1929–1934[1]

Industrial attachment	1929	1930	1931	1932	1933	1934
Mining and quarrying	1,434	1,331	1,104	911	926	1,070
Manufacturing	1,209	1,213	1,083	879	882	980
Construction	1,764	1,709	1,532	1,149	1,108	1,193
Transportation [2]	1,637	1,592	1,520	1,311	1,298	1,368
Average, above industries	1,404	1,328	1,188	961	929	1,039

[1] Source: Martin, Robert F., National Income and its Elements, National Industrial Conference Board, Inc., 1936, p. 29.

[2] Includes only steam railroads, Pullman express, and water transportation.

TABLE 10

Year	Average number of persons unemployed [1]	Average annual wages and salaries, all industrial attachments [2]	Average annual sacrifice of wages and salary income	Total realized production income [3]	Ratio of wage and salary income sacrificed to total realized production income
			Millions of dollars	*Millions of dollars*	*Percent*
1929	1,813,000	$1,437	2,605	69,403	3.8
1930	4,921,000	1,389	6,835	62,334	11.0
1931	8,634,000	1,263	11,077	50,486	21.9
1932	12,803,000	1,106	14,160	37,349	37.9
1933	13,176,000	1,026	13,519	35,037	38.6
1934	11,382,000	1,066	12,133	39,540	30.7

[1] Nathan, Robert R., *Estimating Unemployment in the United States, 1929–1935* (in International Labour Review, January 1936, Vol. 33, No. 1, p. 49–73. Table following p. 80).

[2] Martin, Robert F., *National Income and Its Elements* (New York: National Industrial Conference Board, 1934, p. 28).

[3] Martin, Robert F., *National Income and Its Elements* (New York: National Industrial Conference Board, 1936, p. 13).

TABLE 11

Minimum budget for a self-supporting family consisting of father, mother, and three children aged 7, 10, and 13, respectively, Chicago, 1929 [1]

Item	Expenditures	
	Monthly	Annual
Rent (as necessary; allow $30 per month) [2]	$30.00	$360.00
Food	54.00	648.00
Clothing and toilet articles	24.20	290.40
Fuel	11.50	138.00
Household supplies and furniture	7.00	84.00
Carfare	4.67	56.04
Care of health	7.00	84.00
Savings and insurance	10.00	120.00
Education	3.00	36.00
Recreation	4.00	48.00
Organization and church dues	3.00	36.00
Incidental and emergency expenses (moving, accidents, loss of wages by illness and change of position, etc.)	4.00	48.00
Total	162.37	1,948.44
Total if rent is estimated at $35 per month	167.37	2,008.44

[1] Source: "The Chicago Standard Budget for Dependent Families", Chicago Council of Social Agencies, 1929, p. 49.

[2] This estimate is undoubtedly too low, since Chicago families in 1935–36, when rents were lower than in 1929, paid an average rent of $30.80 if they were in the $1,500 to $1,750 group and $34.20 if they were in the income group of $1,750 to $2,000. See "Incomes Received and Rents paid by Chicago Families", preliminary report released Feb. 23, 1937, by the U. S. Bureau of Labor Statistics.

TABLE 12

Minimum amount required for self-supporting family of five in Chicago in 1929 and corresponding amounts required in 1930–1935 based on Bureau of Labor Statistics cost-of-living index

Year	Bureau of Labor Statistics, cost-of-living index [1]	Amount required for self-supporting family of five in Chicago
1929	100.0	[1] $2,008
1930	97.7	1,954
1931	89.1	1,782
1932	80.5	1,610
1933	76.2	1,524
1934	78.9	1,578
1935	81.1	1,622

[1] "National Income in the United States 1929–1935", 1936, p. 44.

TABLE 13

Income and expenditures of 1,13¼ families in 11 New Hampshire Towns in 1935–36 [1]

Town	Number of families studied	Average number of members per economic family [2]	Average number of gainful workers per family [3]	Average income per family [4]	Average earnings of chief earner	Average current expenditures per family
Manchester	147	3.83	1.86	$1,405	$996	$1,399
Nashua	100	4.02	1.72	1,435	1,046	1,355
Concord	99	3.42	1.28	1,476	1,297	1,404
Berlin	100	4.08	1.24	1,137	1,039	1,119
Portsmouth	95	3.81	1.37	1,402	1,151	1,369
Keene	97	3.41	1.38	1,232	1,014	1,192
Dover	98	3.60	1.57	1,311	1,028	1,279
Laconia	100	3.46	1.41	1,299	1,101	1,253
Claremont	100	3.51	1.47	1,171	971	1,178
Littleton	99	3.47	1.44	1,145	945	1,128
Conway	99	3.77	1.38	1,242	1,115	1,199

[1] Source: "Money Disbursements of Wage Earners and Clerical Workers in 11 New Hampshire Communities." *Monthly Labor Review*, United States Department of Labor, Bureau of Labor Statistics, Vol. 42, No. 3, March 1936, p. 557, Table 1.

[2] Computed to represent the number of persons dependent on the family funds for a year. Persons who were part of the "economic family" for only part of a year were counted as a fraction of a member depending on the proportion of the year each was dependent on the family funds.

[3] Each person gainfully employed at any time of the year treated as one.

[4] Current income only. Does not include money used for current expenditures but derived from bank accounts or cash received before the schedule year, from the surrender of life insurance or endowment policies, from sale of properties, from repayment of loans made before the schedule year, or by increase in debt during the year.

TABLE 14

Income and expenditures of 721 white families in 3 southern cities, 1933–34 [1]

Item	Richmond	Birmingham	New Orleans
Number of families studied	198	202	321
Average number of members in economic family	3.78	3.67	3.80
Average number of gainful workers per family	1.57	1.38	1.34
Average income per family	$1,563	$1,440	$1,310
Average earnings of the chief earner	$1,253	$1,241	$1,109
Average current expenditures per family	$1,542	$1,461	$1,299

[1] Source: *Monthly Labor Review*, United States Department of Labor, Bureau of Labor Statistics, Vol. 42, No. 5, May 1936, p. 1460.

TABLE 15

Annual income and expenditure of wage-earning and clerical families in New York City, 1934–1936 [1]

Item	Number or amount
Population, 1930	6,930,446
Number of families studied	897
Average number of members in economic family	3.66
Average number of consumption units per family	3.38
Average number of gainful workers per family	1.62
Average net income per family	$1,743
Average earnings of chief earner	$1,357
Average current expenditure per family	$1,839

[1] Source: "Money Disbursements of Wage Earners and Lower-Salaried Clerical Workers in New York City," *Monthly Labor Review*, Vol. 44, No. 1, Jan. 1937, table 4.

TABLE 16

Amount of obligations incurred for emergency relief by sources of funds, continental United States, by months January 1933 through June 1936

[As reported to the Federal Emergency Relief Administration]

Years and months	Obligations incurred for emergency relief [1]						
	Total amount	Federal funds		State funds		Local funds	
		Amount	Percent	Amount	Percent	Amount	Percent
1933							
January	$60,827,161	$31,175,001	51.3	$8,898,289	14.6	$20,753,871	34.1
February	67,375,423	39,850,236	59.1	5,921,376	8.8	21,603,811	32.1
March	81,205,632	51,355,220	63.2	5,212,395	6.4	24,638,017	30.4
April	72,954,261	45,337,088	62.2	8,182,121	11.2	19,435,052	26.6
May	70,806,569	48,801,867	68.9	5,016,144	7.1	16,988,558	24.0
June	66,338,227	42,463,861	64.0	8,041,783	12.1	15,832,583	23.9
July	60,094,720	37,502,176	62.4	7,576,555	12.6	15,015,989	25.0
August	61,467,608	39,821,780	64.8	8,726,266	14.2	12,919,562	21.0
September	59,337,909	36,328,609	61.2	11,091,809	18.7	11,917,500	20.1
October	64,905,225	40,370,532	62.2	10,208,870	15.7	14,325,823	22.1
November [2]	70,878,048	39,834,747	56.2	16,948,693	23.9	14,104,608	19.9
December [2]	56,597,450	27,841,921	49.2	17,440,358	30.8	11,315,171	20.0
Total, 1933	792,788,233	480,673,029	60.6	113,264,659	14.3	198,850,845	25.1
1934							
January [2]	54,109,353	29,271,268	54.1	15,311,948	28.3	9,526,137	17.6
February [2]	57,113,515	25,937,850	45.4	21,086,098	36.9	10,089,570	17.7
March [2]	69,637,125	32,347,177	46.4	24,906,492	35.8	12,384,456	17.8
April	111,691,855	79,825,631	71.5	17,073,097	15.3	14,793,117	13.2
May	128,807,855	95,368,258	74.2	12,657,094	9.9	20,482,303	15.9
June	125,400,585	91,496,475	73.0	12,088,603	9.6	21,815,507	17.4
July	130,909,112	94,864,436	72.4	12,649,598	9.7	23,395,078	17.9
August	149,151,385	112,843,017	75.5	12,101,987	8.1	24,506,381	16.4
September	141,613,181	108,273,728	76.5	11,320,693	8.0	22,018,760	15.5
October	156,220,954	121,554,418	77.8	13,514,580	8.7	21,151,956	13.5
November	171,942,040	133,358,078	77.6	16,747,682	9.7	21,836,283	12.7
December	179,495,559	138,572,385	77.2	16,120,661	9.0	24,802,533	13.8
Total, 1934	1,475,792,329	1,063,412,718	72.1	185,577,530	12.6	226,802,081	15.3
1935							
January	196,511,394	151,686,026	77.3	19,143,071	9.7	25,482,297	13.0
February	180,629,533	141,742,737	78.5	16,655,453	9.2	22,231,343	12.3

[1] Includes obligations incurred for relief extended under the general relief program, under all special programs, and for administration; beginning April 1934 these figures also include purchases of materials, supplies and equipment, rentals of equipment (such as team and truck hire), earnings of nonrelief persons employed and other expenses incident to the Emergency Work Relief Program.

[2] Does not include Civil Works program expenditures.

TABLE 16—Continued

Amount of obligations incurred for emergency relief by sources of funds, etc.—Continued

Years and months	Obligations incurred for emergency relief						
	Total amount	Federal funds		State funds		Local funds	
		Amount	Percent	Amount	Percent	Amount	Percent
1935							
March	$188,459,179	$146,390,456	77.7	$18,551,341	9.8	$23,517,382	12.5
April	188,347,796	142,263,224	75.5	23,795,391	12.7	22,289,181	11.8
May	188,603,082	144,149,800	76.4	20,092,428	10.7	24,360,764	12.9
June	169,470,814	130,102,300	76.8	17,914,647	10.6	21,453,867	12.6
July [1]	160,632,125	123,595,408	76.9	15,237,033	9.5	21,799,684	13.6
August [1]	147,877,430	111,700,589	75.6	17,052,447	11.5	19,124,394	12.9
September [1]	121,196,453	89,226,014	73.6	15,771,438	13.0	16,199,001	13.4
October [1]	120,990,396	85,281,610	70.5	19,393,250	16.0	16,315,536	13.5
November [1]	95,278,790	63,410,999	66.6	16,743,641	17.6	15,124,150	15.8
December [1]	69,996,739	30,172,123	43.1	24,199,473	34.6	15,625,141	22.3
Total, 1935	1,827,993,731	1,359,921,378	74.4	224,549,613	12.3	243,522,740	13.3
1936							
January [2] [3]	59,600,000	10,400,000	17.4	31,200,000	52.4	18,000,000	30.2
February [2] [3]	56,000,000	4,600,000	8.2	31,600,000	56.4	19,800,000	35.4
March [2] [3]	52,900,000	3,100,000	5.9	30,700,000	58.0	19,100,000	36.1
April [2] [3]	47,800,000	3,100,000	6.5	26,800,000	56.1	17,900,000	37.4
May [2] [3]	41,800,000	2,400,000	5.8	23,000,000	55.0	16,400,000	39.2
June [2] [3]	39,600,000	1,700,000	4.3	22,600,000	57.1	15,300,000	38.6
Total, 6 months, 1936	297,700,000	25,300,000	8.5	165,900,000	55.7	106,500,000	35.8
Grand total, 42 months	4,394,274,293	2,929,307,125	66.7	689,291,802	15.7	775,675,366	17.7

[1] Does not include rural rehabilitation program expenditures (program transferred to the Resettlement Administration) nor college student aid expenditures (program not in operation in July and August; conducted by the National Youth Administration from September 1935 through June 1936).

[2] Partially estimated.

[3] Tentative estimate—not strictly comparable with data for months prior to January 1936 since data are not limited to emergency relief. See explanation in accompanying text and in Monthly Report of the Federal Emergency Relief Administration for February 1936, pp. 23-24.

Source: Federal Emergency Relief Administration.

TABLE 17

Amount of obligations incurred for emergency relief[1] by sources of funds, by States, January 1933 through December 1935

States	Obligations incurred for emergency relief						
	Total	Federal funds		State funds		Local funds	
		Amount	Percent	Amount	Percent	Amount	Percent
Alabama	$47,315,376	$44,762,571	94.6	$312,212	0.7	$2,243,593	4.7
Arizona	19,214,371	16,170,501	84.2	2,660,321	13.8	383,549	2.0
Arkansas	41,534,165	40,001,661	96.3	305,136	.8	1,217,368	2.9
California	235,096,613	158,041,750	67.2	38,209,480	16.3	38,845,383	16.5
Colorado	46,509,880	39,269,117	84.4	2,100,257	4.5	5,140,506	11.1
Connecticut	53,526,634	23,514,388	43.9	5,300,394	9.9	24,711,852	46.2
Delaware	5,194,435	2,103,468	40.5	2,107,942	40.6	983,025	18.9
District of Columbia	20,012,872	14,665,529	73.3	0	0	5,347,343	26.7
Florida	42,376,989	40,361,552	95.3	15,492	(2)	1,999,945	4.7
Georgia	47,730,325	44,793,264	93.8	5	(2)	2,937,056	6.2
Idaho	15,883,655	13,359,321	84.1	806,612	5.1	1,717,722	10.8
Illinois	308,672,762	232,791,591	75.4	62,119,849	20.1	13,761,322	4.5
Indiana	80,303,842	51,782,792	64.5	164,635	.2	28,356,415	35.3
Iowa	41,764,128	24,126,482	57.8	4,169,752	10.0	13,467,894	32.2
Kansas	54,747,935	39,949,245	73.0	470,877	.9	14,327,813	26.1
Kentucky	45,078,692	38,819,639	86.1	2,573,998	5.7	2,685,055	8.2
Louisiana	53,126,959	51,495,793	96.9	1,697	(2)	1,629,469	3.1
Maine	23,299,386	11,787,577	50.6	2,087,142	9.0	9,424,667	40.4
Maryland	45,916,020	33,349,321	72.6	10,127,288	22.1	2,439,411	5.3
Massachusetts	218,996,550	114,510,390	52.3	560,381	.3	103,925,779	47.4
Michigan	173,020,332	127,137,454	73.5	26,466,306	15.3	19,416,572	11.2
Minnesota	88,657,414	67,595,056	76.3	5,545,818	6.3	15,416,540	17.4
Mississippi	32,179,719	30,948,147	96.2	208,334	.6	1,023,238	3.2
Missouri	82,747,423	64,083,417	77.4	9,008,186	10.9	9,655,820	11.7
Montana	25,334,633	22,439,392	88.6	451,219	1.8	2,444,022	9.6
Nebraska	28,091,784	21,583,107	76.8	2,748	(2)	6,505,929	23.2
Nevada	5,724,742	5,074,574	88.6	130,489	2.3	519,679	9.1
New Hampshire	12,299,611	5,493,617	44.7	3,664,359	29.8	3,141,635	25.5
New Jersey	138,413,433	94,725,915	68.4	32,832,757	23.7	10,854,761	7.9
New Mexico	15,269,713	14,738,853	96.5	351,293	2.3	179,567	1.2
New York	726,684,294	385,601,208	53.1	125,445,319	17.2	215,637,767	29.7
North Carolina	39,557,112	38,402,296	96.8	0	0	1,254,816	3.2
North Dakota	28,902,104	24,856,991	86.3	41,938	.1	3,903,175	13.6
Ohio	219,473,200	170,540,527	77.8	33,017,460	15.0	15,915,213	7.2
Oklahoma	51,874,144	44,864,484	86.5	364,785	.7	6,644,875	12.8
Oregon	27,717,907	22,018,553	79.4	2,582,754	9.3	3,116,600	11.3

[1] Includes obligations incurred for relief extended under the general relief program, under all special programs, and for administration; beginning April 1934 these figures also include purchases of materials, supplies, and equipment, rental of equipment (such as team and truck hires), earnings of nonrelief persons employed, and other expenses incident to the Emergency Work Relief Program.

[2] Less than one-tenth of 1 percent.

TABLE 17.—Continued

Amount of obligations incurred for emergency relief by sources of funds, by States, January 1933 through December 1935—Continued

States	Obligations incurred for emergency relief						
	Total	Federal funds		State funds		Local funds	
		Amount	Percent	Amount	Percent	Amount	Percent
Pennsylvania	$446,355,327	$316,686,933	70.9	$104,69,5574	23.5	$24,972,820	5.6
Rhode Island	20,190,295	7,940,253	39.3	5,299,281	26.3	6,950,761	34.4
South Carolina	36,613,734	35,866,576	98.0	1,324	(1)	745,834	2.0
South Dakota	35,957,208	32,234,557	89.6	0	0	3,722,651	10.4
Tennessee	36,897,618	34,449,851	93.4	893,324	2.4	1,554,443	4.2
Texas	97,152,410	76,693,808	78.9	19,412,654	20.0	1,045,948	1.1
Utah	25,041,740	19,754,620	78.9	3,370,051	13.5	1,917,069	7.6
Vermont	6,013,946	3,406,100	56.6	39,845	.7	2,568,001	42.7
Virginia	26,361,447	23,779,324	90.2	34,452	.1	2,547,671	9.7
Washington	48,890,429	39,965,184	81.7	5,919,720	12.1	3,005,525	6.2
West Virginia	57,232,504	50,655,633	88.5	5,016,987	8.8	1,559,884	2.7
Wisconsin	109,901,020	79,669,888	72.5	4,234,316	3.8	25,996,816	23.7
Wyoming	7,724,461	7,044,855	91.2	267,039	3.5	412,567	5.3
Total, continental United States	4,096,574,293	2,904,007,125	70.9	523,391,802	12.8	669,175,366	16.3

[1] Less than one-tenth of 1 percent.

Source: Federal Emergency Relief Administration.

TABLE 18

Per capita income of employees, 1929–1935 [1]

Item	1929	1930	1931	1932	1933	1934	1935
All Employees, excluding work relief	$1,466	$1,427	$1,336	$1,178	$1,097	$1,143	$1,201
Salaried Employees (selected industries)[2]	2,560	2,542	2,410	2,125	2,028	2,019	2,080
Wage Earners (selected industries)[2]	1,404	1,326	1,188	961	929	1,024	1,117
Salaried Employees or Wage-earners (all other industries)	1,383	1,359	1,296	1,183	1,092	1,122	1,162

[1] Source: "National Income in the United States 1929-35," U. S. Bureau of Foreign and Domestic Commerce, 1936, p. 32.

[2] Includes mining, manufacturing, construction, steam railroads, Pullman railway express, and water transportation.

TABLE 19

Number of employees by occupational groups at each classified rate of salary or wage per week, in Ohio, 1929, data for 42,216 reporting establishments [1]

Rate of pay per week	Wage earners		Bookkeepers, stenographers, and office clerks		Sales people (not traveling)	
	Number	Percentage of total	Number	Percentage of total	Number	Percentage of total
Under $5	11,025	0.9	664	0.4	2,108	2.2
$5 but under $10	25,641	2.0	1,853	1.0	3,352	3.4
$10 but under $12	30,437	2.4	3,480	1.9	5,753	5.9
$12 but under $15	73,767	5.7	9,370	5.2	12,092	12.3
$15 but under $20	147,893	11.5	29,874	16.6	17,215	17.6
$20 but under $25	222,781	17.3	29,959	16.7	12,136	12.4
$25 but under $30	200,123	15.6	25,972	14.5	10,878	11.1
$30 but under $35	183,433	14.3	19,814	11.0	10,199	10.4
$35 but under $40	140,132	10.9	14,067	7.8	6,890	7.0
$40 but under $50	142,920	11.1	18,025	10.0	8,338	8.5
$50 or over	107,100	8.3	26,449	14.7	8,945	9.1
Total employees	1,285,252	100.0	179,527	100.0	97,896	100.0
Total wage or salary payments (thousand dollars)	1,492,141	.....	282,018	.....	119,084	.....
Average annual salary or wage (dollars)	1,161	.....	1,571	.....	1,216	.....

[1] Source: Analysis prepared by the National Industrial Conference Board, Inc., "National Income and its Elements," loc. cit., p. 20, from data in "Rates of Wages, Fluctuation of Employment, Wage and Salary Payments in Ohio, 1929," Industrial Commission of Ohio, Division of Labor Statistics, Report No. 26, Columbus, Ohio, 1930.

TABLE 20

Estimates of unemployment

[Thousands of persons]

	Robert Nathan	American Federation of Labor	Cleveland Trust Company	National Industrial Conference Board	National Research League	Alexander Hamilton Institute
1929						
January	2,631	3,060			4,430	4,257
February	2,913	3,119			4,200	4,263
March	2,860	2,560			3,845	3,970
April	2,217	2,043			2,695	3,701
May	1,817	1,754			2,070	3,568
June	1,520	1,447			1,805	3,447
July	1,042	1,214			1,580	3,358
August	649	1,064			1,195	3,034
September	907	614			915	2,941
October	492	910			1,240	3,027
November	1,853	1,949			2,400	3,667
December	2,831	2,629			3,500	4,053
1930						
January	4,065	3,919	2,839		4,990	5,398
February	4,424	4,286	3,293		5,160	5,822
March	4,644	4,323	3,447	3,338	5,080	5,958
April	4,386	4,049	3,188		4,640	6,015
May	4,299	3,756	3,315		4,250	6,200
June	4,161	3,906	3,681	3,177	4,530	6,645
July	4,196	4,441	4,138		4,940	7,389
August	4,782	4,919	4,633		5,065	7,876
September	5,040	4,963	4,518	5,433	5,140	7,831
October	5,481	5,525	4,911		5,560	8,055
November	6,507	6,293	5,799		6,720	8,656
December	6,956	6,841	5,732	7,090	7,825	8,996
1931						
January	8,049	8,169	8,111		9,480	10,182
February	8,334	8,274	8,354		9,565	10,453
March	8,280	8,123	8,301	7,839	9,235	10,443
April	8,075	7,815	8,059		8,820	10,264
May	8,024	7,811	7,982		8,550	10,353
June	8,026	7,894	8,186	7,747	8,860	10,610
July	7,971	8,367	8,672		9,375	11,123
August	8,434	8,760	9,090		9,045	11,407
September	8,743	8,846	8,964	9,319	9,425	11,454
October	9,138	9,484	9,396		10,015	11,749
November	9,925	10,410	10,212		10,285	12,266
December	10,614	10,889	9,999	11,010	11,835	12,480
1932						
January	11,462	11,926	11,798		13,340	13,680
February	11,934	12,168	12,714		13,480	13,940
March	12,389	12,387	13,468	12,622	13,689	14,089

TABLE 20—Continued

Estimates of unemployment—Continued

	Robert Nathan	American Federation of Labor	Cleveland Trust Company	National Industrial Conference Board	National Research League	Alexander Hamilton Institute
1932						
April	12,420	12,519	12,729	.....	13,835	14,521
May	12,837	13,004	13,080	.....	13,830	15,020
June	13,119	13,373	13,553	13,757	14,375	15,525
July	13,425	13,793	14,243	.....	14,790	16,077
August	13,608	13,968	14,378	.....	14,770	16,056
September	13,118	13,458	13,819	14,085	14,185	15,539
October	12,834	13,415	13,693	.....	14,230	15,268
November	13,204	13,925	14,119	.....	14,770	15,585
December	13,587	14,240	14,392	14,618	15,480	15,614
1933						
January	14,492	15,166	15,355	.....	16,820	16,549
February	14,597	15,319	15,585	.....	16,860	16,563
March	15,071	15,653	16,119	15,939	17,110	16,974
April	14,714	15,125	15,628	.....	16,430	16,586
May	14,341	14,615	15,337	.....	15,690	16,256
June	13,528	13,843	14,548	14,316	14,880	15,528
July	12,839	13,458	14,189	.....	14,200	14,920
August	12,111	12,662	13,251	.....	13,340	13,929
September	11,448	11,854	12,238	12,320	12,505	13,068
October	11,176	11,842	11,976	.....	12,410	12,966
November	11,738	12,374	12,391	.....	12,895	13,440
December	12,046	12,760	12,554	12,532	13,530	13,550
1934						
January	12,599	13,382	13,253	.....	14,790	14,304
February	12,072	12,964	12,744	.....	14,235	13,740
March	11,577	12,420	12,194	11,744	13,485	13,143
April	11,161	12,004	11,824	.....	12,905	12,876
May	10,897	11,711	11,330	.....	12,380	12,756
June	10,743	11,714	11,227	11,338	12,370	12,951
July	10,987	12,222	11,919	.....	12,930	13,457
August	11,382	12,362	12,117	.....	13,040	13,453
September	11,908	12,429	12,276	12,387	13,215	13,715
October	11,597	12,213	12,011	.....	12,920	13,294
November	11,996	12,581	12,391	.....	13,445	13,591
December	12,085	12,359	12,269	12,095	13,735	13,148
1935						
January	12,581	12,364	13,183	12,437	14,480	13,773
February	12,358	12,093	12,987	12,180	14,085	13,433
March	12,183	11,912	12,848	11,920	13,775	13,198
April	11,807	11,559	12,409	11,554	13,255	12,999
May	11,618	11,508	12,400	11,379	12,995	13,111
June	11,446	11,451	12,370	11,281	13,065	13,130
July	11,378	11,488	12,698	11,398	12,940	13,240

TABLE 20—Continued

Estimates of unemployment—Continued

	Robert Nathan	American Federation of Labor	Cleveland Trust Company	National Industrial Conference Board	National Research League	Alexander Hamilton Institute
1935						
August	11,103	11,193	12,428	11,378	12,575	13,005
September	10,915	10,734	11,998	11,106	12,140	12,537
October	10,606	10,480	11,671	10,672	12,080	12,149
November	10,738	10,669	11,899	10,754	12,455	12,235
December	10,640	10,719	11,700	10,243	13,035	11,763
1936						
January	11,687	11,666	12,900	10,777	14,235	12,717
February	11,379	11,577	12,930	10,558	14,155	12,641
March	11,140	11,199	12,602	10,549	13,530	12,345
April		10,536		10,286	12,720	11,925
May		10,275		10,015	12,170	11,812
June		10,140		9,769	12,035	11,761
July		10,102		9,672	11,980	11,718
August		9,747		9,405	11,565	11,427
September		9,217		8,975	11,140	
October		8,894				
November		9,032				

Sources: Nathan, Robert, *Estimates of Unemployment in the United States, 1929-1935*, International Labor Review, Vol. XXXIII, No. 1, January 1936. This publication carried the series no further than October, 1935. In Volume 80, *Congressional Record*, May 8, 1936, P. 7004, it is carried as far as March 1936; *The American Federationist*, February 1937, revising the figures for 1935 and 1936. The earlier figures are contained in *The American Federationist* for January 1936; Cleveland Trust Company, *Business Bulletin*, March 15, 1936. See also Volume 80 *Congressional Record*, May 8, 1936, page 7004; *Conference Board Bulletin* of November 13, 1936, *Conference Board Service Letter*, January 30, 1937 and February 27, 1937; National Research League, *Unemployment in the United States* (March 1935), further figures were given in monthly releases; Alexander Hamilton Institute, Information received by mail; see also *Business Conditions Weekly*, published by them.

APPENDIX C

THE TAX IS AN EXCISE AND THEREFORE NEED NOT BE APPORTIONED

Pursuant to Article I, Section 9, of the Constitution, direct taxes must be apportioned among the States in accordance with the census. See also Article I, Section 2. It is clear, however, that the present tax is an excise, and therefore not subject to the requirement of apportionment.

Section 901 imposes on every employer covered by the Act a tax *with respect to having individuals in his employ.* Whether it be regarded as a tax upon the receipt of services or upon the exercise of the privilege to employ, it is unquestionably an excise, supported not only by the decisions of this Court but by English revenue practice of long standing.

As early as 1777, prior to our Constitutional Convention, the British Parliament had imposed upon every master an annual excise of twenty-one shillings "for every male servant" employed as "maitre d'hotel, house-steward, master of the horse, groom of the chamber, valet de chambre, butler, under-butler, clerk of the kitchen, confectioner, cook, house-porter, footman, running-footman, coachman, groom, postillion, stable-boy, and the respective helpers in the stables of such coachman, groom, or postillion, or in the capacity of gardener (not being a day-labourer) park-keeper, game-keeper,

huntsman, whipper-in * * *". (Revenue Act of 1777, 17 George III, c. 39.) That statute, with some modifications as to rate and scope, but with no change as to general principle, served as the prototype for the Act of 1803 (43 Geo. III, c. 161); Act of 1812 (52 Geo. III, c. 93); Act of 1853 (16 and 17 Vict., c. 90); and the Act of 1869 (32 and 33 Vict., c. 14). See 24 Halsbury's Laws of England (First Edition), pp. 692 *et seq.* The 1869 Act is still on the statute books of England and furnishes a close analogy to the tax imposed by Title IX of the Social Security Act. The current practice of some of our States affords further support for treating this tax as an excise. *Gillum* v. *Johnson* (Supreme Court of California), 62 P. (2d) 1037 (not yet officially reported); *Beeland Wholesale Co.* v. *Kaufman* (Supreme Court of Alabama), decided March 17, 1937. Cf. *Mountain Timber Co.* v. *Washington,* 243 U. S. 219, 237, 244–245.

While it is perhaps difficult to extract from judicial pronouncement an exact and consistent definition of an excise, the numerous decisions of this Court have, merely through the process of inclusion and exclusion, marked out with a high degree of precision the boundaries of that concept. And an examination of those decisions permits no doubt that the tax herein lies well within those boundaries.

Viewed as an excise on the *receipt* of services, the tax finds cogent support in the excises on the receipt of property. *Knowlton* v. *Moore,* 178 U. S. 41; *Scholey* v. *Rew,* 23 Wall. 331. Or, if considered as a tax on the exercise of the privilege to employ, there is no doubt that it is an excise. The basic

privilege of merely engaging in business may be subjected to an excise. *Spreckels Sugar Refining Co.* v. *McClain,* 192 U. S. 397; *Sonzinsky* v. *United States,* No. 614, October Term, 1936, March 29, 1937. See Maguire, *Taxing the Exercise of Natural Rights,* in *Harvard Legal Essays* (1934), pp. 273–322. Similarly, a tax on the right to do business in a particular manner, as for example, in corporate form, is an excise and not a direct tax. *Flint* v. *Stone Tracy Co.,* 220 U. S. 107; *Stratton's Independence* v. *Howbert,* 231 U. S. 399; *Anderson* v. *Forty-two Broadway Co.,* 239 U. S. 69; *Railroad Co.* v. *Collector,* 100 U. S. 595. It follows without question that one of the incidents of the right to engage in business, namely, the right to employ, is an appropriate subject for an excise. In no sense can it be said that the tax is imposed because of general ownership of property. Cf. *Pollock* v. *Farmers' Loan & Trust Co.,* 157 U. S. 429, 158 U. S. 601.

Considered in their entirety,[1] the decisions of this Court on the excise question remove all doubt

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[1] Thus, in addition to the taxes considered above, the Court has sustained a tax on the use of carriages for the conveyance of persons (*Hylton* v. *United States*, 3 Dall. 171); a tax on the issuance of state bank notes (*Veazie Bank* v. *Fenno*, 8 Wall. 533); a tax on the selling of lottery tickets and liquor (*License Tax Cases*, 5 Wall. 462; *South Carolina* v. *United States*, 199 U. S. 437; *Ohio* v. *Helvering*, 292 U. S. 360; *United States* v. *Yuginovich*, 256 U. S. 450; *Wainer* v. *United States*, 299 U. S. 92); a tax on articles "manufactured, sold, or removed for sale" (*United States* v. *American Chicle Co.*, 256 U. S. 446); a tax on manufactured tobacco having reference to its origin and intended use (*Patton* v. *Brady*, 184 U. S. 608; *Liggett & Myers Tobacco Co.* v. *United States*, Nos. 161–163, 1936 Term, January 4, 1937; a tax

on the issue herein, and confirm the decisions of the Massachusetts Federal District Court as well as of the highest courts of Massachusetts, Alabama, and California sustaining this very tax. *Davis* v. *Boston & Maine R. R.*, 17 F. Supp. 97 (Mass.); *Howes Brothers Co.* v. *Massachusetts U. C. Commission*, (Supreme Judicial Court of Massachusetts), 5 N. E. (2d) 720 (not yet officially reported); *Beeland Wholesale Co.* v. *Kaufman* (Supreme Court of Alabama), decided March 17, 1937; *Gillum* v. *Johnson* (Supreme Court of California), 62 P. (2d) 1037 (not yet officially reported).

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on the sale or transfer of securities (*Provost* v. *United States*, 269 U. S. 443; *Thomas* v. *United States*, 192 U. S. 363; *Treat* v. *White*, 181 U. S. 264); a tax on sales at commodity exchanges (*Nicol* v. *Ames*, 173 U. S. 509; *duPont* v. *United States*, No. 332, 1936 Term, February 1, 1937); a tax on the manufacture and sale of oleomargarine (*McCray* v. *United States*, 195 U. S. 27); a tax on transfers at death (*New York Trust Co.* v. *Eisner*, 256 U. S. 345); a tax on transfers *inter vivos* (*Bromley* v. *McCaughn*, 280 U. S. 124); and a tax on the use of foreign-built yachts (*Billings* v. *United States*, 232 U. S. 261).

APPENDIX D

THE "ADDITIONAL CREDIT" PROVIDED FOR BY SECTION 909 DOES NOT AFFECT THE VALIDITY OF THIS TAX

In arguing in the main portion of this brief that the tax imposed by Section 901 is not repugnant to the Tenth Amendment, we have dealt with the tax itself and with the *normal* credit and the conditions attached thereto by Sections 902 and 903. In our opinion the normal credit is the only credit which requires analysis in the case at bar, since no other credit is available until 1938. However, out of an abundance of caution, we shall explain here the additional credit allowed by Sections 909 and 910, and demonstrate that it has no present bearing on the tax now imposed on the petitioner, that if it were presently relevant it would not be repugnant to the Constitution, and that even if the additional credit were unconstitutional, the remainder of the Title, including the tax, would not be affected thereby.

1. THE PURPOSE AND SCOPE OF THE ADDITIONAL CREDIT ALLOWED BY SECTIONS 909 AND 910

In order to understand the purpose and scope of Sections 909 and 910, it is necessary to have in mind the different types of unemployment compensation funds which it is conceivable that a State

might establish. So far as Congress was aware,[1] and so far as we are aware, there are only three main types of unemployment compensation funds, though the variations within, and combinations of, these types are numerous:

(1) The first type is a *pooled unemployment fund,* defined in Section 910 (c) (2), in which all contributions are commingled and from which payments of compensation are made to unemployed workmen without reference to the employer for whom they had worked.[2] In connection with such a fund, a State sometimes[3] provides that a separate bookkeeping account be kept for each employer, showing what he contributed and what his workmen drew, and further provides that those employers whose records merited such treatment should in the future contribute at an increased reduced rate. Such reduced rates are commonly called "merit ratings."

(2) The second type provides for separate *unemployment reserve accounts,*[4] defined in Section 910 (c) (1). Under such a system, each employer makes his contributions into a specially segregated

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[1] See Senate Report No. 628, p. 13.

[2] For example, Alabama, California, the District of Columbia, Louisiana, Massachusetts, Mississippi, New Hampshire, New York, Rhode Island, South Carolina, and Washington have laws providing for pooled unemployment funds.

[3] Of the States mentioned in the preceding footnote, all except New York enacted laws providing for merit ratings.

[4] For example, Wisconsin enacted laws providing for separate unemployment reserve accounts, and Indiana has a law providing for reserve accounts together with partial pooling.

account, and each workman when he becomes unemployed must look for compensation to the particular unemployment reserve account accumulated by his former employers. In connection with such a fund, a State ordinarily provides that after his account has accumulated to a certain point, and has shown an ability to withstand the drain of benefit payments, an employer shall in the future either not contribute, or contribute at an increased or reduced rate.

(3) A State might, in connection with,[5] or independently of, one of the two preceding plans, provide for *guaranteed employment accounts,* defined in Section 910 (c) (3). By this plan, an employer undertakes to give a certain minimum period of employment during the year to each of his employees, and at the same time contributes to an account or fund which can be drawn on by any of his employees as to whom the guaranty is not fulfilled or renewed. Such a plan provides that an employer who has fulfilled his guaranty in the past shall in the future either not contribute or contribute at an increased or reduced rate.

From the brief description just given it is plain that no matter what type of unemployment compensation system is established, a state law might have provisions whereby the contributions required of an individual employer would be fixed in proportion to the employer's proved experience in preventing unemployment among his workers. Such provisions have a uniform purpose: they are designed to furnish a separate classification for em-

[5] For example, California, Indiana, and Wisconsin have in connection with their unemployment compensation laws provided for guaranteed employment accounts.

ployers who reduce the volume of unemployment which otherwise must be borne by either the unemployment funds, state relief or federal relief.

In view of the inclusion of such provisions in state legislation, which was foreseen, and in view of the purpose of such inclusions, the rationale of Sections 909 and 910 becomes plain. Congress recognized that if it allowed as a credit against the tax imposed by Section 901 only the amounts actually paid into a state unemployment fund, it would destroy the significance of the classification established by the state law. The lower rate offered by the State to employers who had proved that their enterprises belonged in a different class would enure not to the benefit of the employer but to the benefit of the Federal Government. The employer would be no better off for his state merit rating since he would have a smaller amount to deduct from his federal tax. Sections 909 and 910 have been embodied in Title IX in order to increase freedom of state choice [*] and give significance to a classification based on an individual employer's proven success in reducing local and federal expenditures.

Section 909 (a) provides that "in addition to the credit allowed under section 902, a taxpayer may, * * * credit against the tax imposed by section 901 for any taxable year *after the taxable year 1937*, an amount * * * equal to the amount * * * by which the contributions * * * actually paid by the taxpayer * * * is exceeded by * * * (1) The amount of contributions which he would have been required to pay

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[*] See Senate Rept., No. 628, p. 13.

under such [State] law for such taxable year if he had been subject to the highest rate applicable from time to time throughout such year to any employer under such law."[7] [Italics supplied.]

Two sets of limitations, however, are imposed on this additional credit. First, under no circumstances can the taxpayer entirely escape paying at least part of the federal tax levied under Section 901: it is specifically provided that "the total credits allowed to a taxpayer under this title shall not exceed 90 per centum of the tax against which such credits are taken." Section 909 (c).

A second set of limitations is equally simple in objective, though, because of technical difficulties, the formulation of them in Section 910 is neces-

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[7] Section 909 (a) (2) applies only when an employer carries on business in 2 or more States; and in such a situation it is designed to avoid the use of Section 909 (a) (1) to secure credits which are unduly large and which discriminate against employers who operate in only a single State. A suppositious case will illustrate the rare situation Section 909 (a) (2) covers. Suppose in 1940 an employer, X, had one establishment in State A with a payroll of $100,000 annually, and another establishment in State B with a like payroll of $100,000. State A has no unemployment compensation law. State B has a law under which ordinary employers pay at the rate of 5%, but X, on account of his merit rating, pays at the rate of 1%, i. e., $1,000. Under Section 901, the federal tax is $3,000 for operations in each State, or a total of $6,000. Under Section 902 the taxpayer is entitled to a credit of $1,000. If it were not for Section 909 (a) (2), the operation of Section 909 (a) (1) would give him an additional credit of $4,000. However, Section 909 (a) (2) cuts the additional credit down to $1,700, thus preventing the taxpayer from using a state law applicable to operations in State B to reduce a tax levied on account of operations in State A.

sarily more complicated. These limitations are designed to make certain that the Federal Government does not reduce the tax on the basis of a state classification unless such state classification is in fact what it purports to be:[8] *i. e.*, a distinction based on tests indicating whether the reduced rate can safely be allowed without endangering the purpose of the law. There are only two such tests, experience and reserve. A given employer's experience indicates whether extensive unemployment is likely to occur among his employees. The amount of a reserve indicates whether, even if such unemployment should occur, the right of the employers to benefits is sufficiently protected. Section 910 (a) sets forth the appropriate tests in each case.

In the case of a pooled fund, the test of a reserve is inapplicable, since no separate reserve is maintained for individual employers. The sole available test is therefore that of experience, and clause (1) requires no more than that the reduced rate be based on three years of experience. In the case of a guaranteed employment account, the amount of reserve available is an adequate test,

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[8] The conditions embodied in Section 910 make certain that the additional credit will be allowed only when the State grants a reduction in contribution rate under circumstances that leave unimpaired the solvency and workability of the state unemployment compensation plan. To put it differently—Section 903 defines an unemployment compensation law, so that credits will be restricted to contributions to such a law and no other; similarly, Section 910 defines the conditions under which contribution rates may be reduced without destroying the character of the unemployment compensation law as such.

and the requirement that the account amount to 7½ percent of the wages payable in the preceding year is employed, in addition to the fulfillment of the guaranty in the preceding year. In the case of a separate reserve account, a similar condition is stated, plus an additional test that the reserve must also amount to not less than five times the largest amount of unemployment compensation paid within any of the three preceding years. This condition is appropriate only in the case of a separate reserve account, and not in the case of a guaranteed employment account, since guaranteed employment presupposes the payment of the guaranteed wages rather than of unemployment compensation, and the test of compensation previously paid is therefore not available.

2. THE ADDITIONAL CREDIT HAS NO PRESENT BEARING ON THE TAX NOW IN QUESTION

Although, for the convenience of the Court, we have explained the additional credit, we do not regard it as in issue in this case. It is undeniable that the additional credit cannot be taken except in connection with "the tax imposed by section 901 for any taxable year *after the taxable year 1937.*" [Italics supplied.] Section 909 (a).

Section 901 enumerates three different rates of tax: a one per cent tax "with respect to employment during the calendar year 1936"; a two per cent tax "with respect to employment during the calendar year 1937"; and a three per cent tax "with respect to employment after December 31, 1937." Congress was willing to allow an additional credit only during and after the third year,

when a high tax yield insured increased revenue. In imposing taxes for 1936 and 1937, when the rate was low, it permitted no such offset. Since the petitioner's complaint is limited to the 1936 tax, it has no concern with an additional credit available only in future years against future taxes which, if they are not entirely different, are, at least, at different rates. By the time the additional credit is available, this petitioner may not be in business.

Moreover, the petitioner cannot show that the additional credit will ever come into operation. Congress may repeal the additional credit provisions before their effective date. If in 1938 the provisions have not been repealed, none the less, there may not be a single State which will then have a law under which merit ratings are allowed. In 1938 there may not be a single taxpayer whose employment record entitles him to secure from a State a lower rate of unemployment contributions.

Under these circumstances, the consideration of the additional credit provisions is not alone premature, it is irrelevant to this tax and to these taxpayers. *Premier-Pabst Sales Co.* v. *Grosscup,* 298 U. S. 226; *Hatch* v. *Reardon,* 204 U. S. 152, 160, 161.

3. THE ADDITIONAL CREDIT, CONSIDERED ALONE OR IN CONNECTION WITH OTHER PROVISIONS OF TITLE IX, IS NOT REPUGNANT TO THE TENTH AMENDMENT

If Sections 909 and 910 are at issue in the case at bar, we contend that the additional credit, there offered, whether considered alone or in connection with other provisions of Title IX, is not repugnant to the Tenth Amendment and does not involve

penalties, economic coercion, or federal regulation of matters not within the power of Congress.

We have in the main brief pointed out the scope of the penalty doctrine and the doctrine of economic coercion: Congress cannot prescribe a detailed course of conduct in a field reserved to the States and then either punish departures from it or offer irresistible inducements to follow it. We have also pointed out that these doctrines did not apply to the tax or to the normal credit because under their combined operation a taxpayer could in no event reduce his out-of-pocket expenses or increase his receipts. While, by the additional credit a taxpayer may secure a reduction, though not a complete elimination,* of his financial burdens if his State has classified him as an employer whose past employment experience or whose present reserves justify a lower contribution rate, there are significant factors which make these doctrines inapplicable. In the first place, the reduction of the individual's financial burdens is primarily accomplished by the state law, and is merely acceded to or recognized by the federal law. Hence it cannot be said that any course of conduct has been prescribed by Congress, or that any federal regulation is involved.

Nor can it accurately be said that Congress has left the way open to the States to prescribe a

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* Section 909 (c) provides: "The total credits allowed to a taxpayer under this title shall not exceed 90 per centum of the tax against which such credits are taken." Thus, no matter what his merit rating, a person subject to the tax imposed by Section 901 will be required to increase the general revenues of the Treasury.

course of conduct which, if followed by the taxpayer, will *pari passu* reduce the tax. A State which provides for higher and lower contribution rates on the basis set forth in Section 910 in no true sense prescribes a course of conduct or offers a lower rate to one who complies with regulations. The State in establishing different rates draws a distinction based, not on the contemporaneous or future *conduct* of an employer, or on his contemporaneous or future *compliance* with a detailed pattern of conduct, but on the already proven or *established character of his enterprise.* If an employer has the sort of enterprise which in the past paid more in contributions than in benefits, or if an employer already has the sort of enterprise which is protected by a reserve account, he gets a lower rate. To recognize an already existing difference is not to penalize, nor to coerce, nor to regulate, but, as many cases teach us, to classify. *Mountain Timber Co.* v. *Washington,* 243 U. S. 219, 241–242; *Tax Commissioners* v. *Jackson,* 283 U. S. 527; *Fox* v. *Standard Oil Co.,* 294 U. S. 87; *Morf* v. *Bingaman,* 298 U. S. 407.[10]

[10] Of course, the fact that an employer's enterprise may, after its character has changed, become subject to a different rate does not show that it is being regulated rather than classified. A higher tax may be imposed on a store if it becomes part of a chain, *Tax Commissioners* v. *Jackson, supra;* or on an automobile if it becomes part of a caravan, *Morf* v. *Bingaman, supra.* Likewise a different rate may be given to an employer's enterprise if a record of experience shows that it pays more in contributions than its workers receive in benefits, or if it has accumulated a reserve. The new rate depends not on the employer's conduct but on the sort of enterprise he owns when the rate is fixed.

Recognition by the Federal Government of classifications established by state law is neither penal nor coercive. It is, as we have shown in the main body of our brief, supported by ample precedent.[11] Moreover, in the statute now under review such recognition has a particular merit, since it avoids a restriction on freedom of state policy. Unless the additional credit were allowed, a State could not effectively give the employer the benefit of a rating based on his past employment record. Indeed, it may be noted that the classification here

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[11] There is sound legislative precedent, never judicially impeached, for giving effect to state exemption policies in federal taxation by granting exemptions from the federal tax based upon state exemptions. In the Act of July 14, 1798, c. 75, 1 Stat. 597, Sec. 2, Congress levied and apportioned a direct tax on lands, dwelling houses, and slaves with a proviso "that no part of said tax shall be assessed upon such lands or dwelling houses and slaves as at the time of passing this act are especially exempted from taxes by the laws of the states, respectively." (See also Act of January 9, 1815, c. 21, 3 Stat. 164, Sec. 5; Act of August 5, 1861, c. 45, 12 Stat. 292, Sec. 8.) In the Act of January 18, 1815, c. 23, 3 Stat. 186, in which duties were imposed on household furniture and on gold and silver watches when kept for use, it was provided (3 Stat. 190, Sec. 14) "And be it further enacted, That the objects taxed as aforesaid which shall * * * be permanently or specially exempted from taxation, at the time of the passing of this act, by the laws of the state or territory wherein the same may be situate, shall be exempted from * * * the duties aforesaid."

The unquestioned validity of the last tax statute mentioned (3 Stat. 186) was referred to in *Knowlton* v. *Moore*, 178 U. S. 41 (footnote, pp. 94, 95), and *Patton* v. *Brady*, 184 U. S. 608.

The additional credits allowed by Section 909 are directly within the tradition of this legislative practice.

recognized serves a federal as well as a state purpose, since it allows a lower federal tax to one who by reducing unemployment, or by reason of a reserve account, lessens an otherwise probable drain on the Federal Treasury.

A final word should perhaps be added pointing out that the conditions set forth in Section 910 are not regulatory. The conditions do not in any way limit the States in allowing any reduction or differences in rate that may accord with local policy. The conditions merely make certain that, before a reduction allowed under state law is made the basis of an additional credit under federal law, the reduction is given on the basis either of the employer's past experience or on the basis of the reserve he has accumulated. Unless the state reduction were based on the basis of experience or reserve, the state law might not be a true unemployment compensation measure.

4. IF THE ADDITIONAL CREDITS ARE UNCONSTITUTIONAL, THE REMAINDER OF TITLE IX, INCLUDING THE TAX, IS NOT AFFECTED THEREBY

If, contrary to our view, the Court should conclude that the additional credits allowed by Sections 909 and 910 are here involved and are unconstitutional, we contend that the remainder of the Title, including the tax, is not affected thereby.

Section 1103 of the Social Security Act provides that:

> If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances shall not be affected thereby.

The presumption of separability which this quoted section furnishes is strongly supported by the order in which Title IX is arranged. First come Sections 901 to 908, inclusive, which in themselves constitute a complete enactment: Section 901 imposes the tax; Sections 902 to 904, inclusive, include provisions with respect to credit against the tax; Section 905 provides for administration; Section 906 grants to States a power to require contributions from persons engaged in interstate commerce; Section 907 lists a number of definitions applicable only to the preceding sections; and Section 908 authorizes government officials to make rules and regulations. It is only after all these provisions that Sections 909 and 910 are set forth as additional features. Section 910 includes its own set of definitions which are not applicable to anything other than the additional credit. Furthermore, as we have already pointed out, the additional credit is not to become operative until two years after the rest of the Title becomes operative. From all these evidences of intention, there can be no doubt that Congress intended the tax to stand even if the additional credit were held unconstitutional. Moreover, it is well settled that when an exemption from a tax which is not an essential part of the scheme is invalid, the exemption falls without affecting the remainder of the tax. *Utah Power & Light Co.* v. *Pfost,* 286 U. S. 165, 184–185; *Huntington* v. *Worthen,* 120 U. S. 97, 102; cf. *National Life Ins. Co.* v. *United States,* 277 U. S. 508, 522.

APPENDIX E

LIST OF STATE UNEMPLOYMENT COMPENSATION LAWS

State	Law
Alabama	Acts, 1935, Ch. 447, as amended by Acts 1935, chs. 156, 194 and 195
Arizona	Laws 1936 (Spec. Sess.) S. B. No. 3
Arkansas	Laws of 1937, Act No. 155 (H. B. 331)
California	Laws 1935, ch. 352
Colorado	Laws 1936 (3d Spec. Sess.) H. B. # 1
Connecticut	Laws 1936 (Sp. Sess.) Ch. 2
District of Columbia	Pub. No. 386, 74th Cong, as amended by Pub. No. 446 and Pub. No. 762
Georgia	Laws of 1937 (H. B. 185)
Idaho	Laws 1936 (3d Sp. Sess.) Ch. 12
Indiana	Laws 1936 (Sp. Sess.) Ch. 4
Iowa	Laws 1936 (Ex. Sess.) S. F. No. 1
Kansas	Laws of 1937 (H. B. 542)
Kentucky	Acts 1936 (4th Spec. Sess.) Ch. 1
Louisiana	Laws 1936, Act No. 97
Maine	Laws 1936 (Spec. Sess.) H. B. 1883, L. D. 938
Maryland	Laws 1936 (2nd Spec. Sess.) Ch. 1
Massachusetts	Laws 1935, c. 479 as amended by Laws 1936, cc. 12 and 249
Michigan	Pub. Acts 1936 (Ex. Sess.) Act No. 1
Minnesota	Laws 1936 (Ex. Sess.) Ch. 2
Mississippi	Laws 1936, ch. 176, as amended by laws 1936 (Spec. Sess.) Ch. 3
Montana	Laws of 1937 (H. B. No. 344)
Nevada	Laws of 1937 (A. 93)
New Hampshire	Laws 1935, ch. 99, as amended by Laws 1935, ch. 142 and Laws 1936, ch. 3
New Jersey	P. L. 1936, ch. 270
New Mexico	Laws 1936 (Spec. Sess.) Ch. 1
New York	Laws 1935, ch. 468, as amended by Laws 1936, chs. 117 and 697
North Carolina	Laws 1936 (Spec. Sess.) H. B. No. 1
North Dakota	Laws of 1937 (S. B. No. 62)
Ohio	Laws 1936 (Spec. Sess.) H. B. No. 608
Oklahoma	Laws 1936 (Ex. Sess.) H. B. No. 1
Oregon	Laws 1935 (Spec. Sess.) Ch. 70

LIST OF STATE UNEMPLOYMENT COMPENSATION LAWS—Continued

State	Law
Pennsylvania	Laws 1936 (2nd Ex. Sess.) Act No. 1
Rhode Island	P. L. 1936, Ch. 2333
South Carolina	Laws 1936, Act No. 768
South Dakota	Laws 1936 (Spec. Sess.) S. B. No. 1
Tennessee	Laws 1936 (Ex. Sess.) Ch. 1
Texas	Laws 1936 (3d Called Sess.) S. B. No. 5
Utah	Laws 1936 (Spec. Sess.) Ch. 1
Virginia	Acts 1936 (Ex. Sess.) Ch. 1
Vermont	Laws 1936 (Spec. Sess.) H. No. 1
West Virginia	Laws 1936 (2d Ex. Sess.) H. B. No. 1
Washington	Laws of 1937, Ch. 162 (S. B. 113)
Wisconsin	Laws 1931, Ch. 20, as amended by laws 1933, chs. 186 and 383 and laws 1935, chs. 192, 272 and 446
Wyoming	1937 Regular Sess. ch. 113 (H. B. 143)

U. S. GOVERNMENT PRINTING OFFICE: 1937

Tabular Representation of Main Features of State Unemployment Compensation Laws Now in Force

	Total	Ala.	Ariz.	Ark.	Cal.	Colo.	Conn.	D. C.	Ga.	Idaho	Ind.	Iowa	Kan.	Ky.	La.	Maine	Md.	Mass.	Mich.	Minn.	Miss.	Mont.	Nebr.	N. H.	N. J.	N. M.	N. Y.	N. C.	N. D.	Ohio	Okla.	Ore.	Penn.	R. I.	S. C.	S. D.	Tenn.	Tex.	Utah	Vt.	Va.	Wash.	W. Va.	Wisc.	Wyo.
1. Type of Fund:																																													
Straight Pooled	6																x										x						x												
Straight Pooled with Merit Rating Dependent upon Future Legislation	4															x					x						x						x											
Pooled with Merit Rating by Commission Classification	7	x						x	x									x				x	x																						
Pooled with Automatic Individual Merit Rating	20		x	x		x	x				x	x		x					x					x	x	x			x	x				x	x	x	x			x		x	
Pooled with Automatic Individual Merit Rating & Guaranteed Employment and Private Plans	2				x					x																																		
Pooled with Automatic Indiv. Merit Rating and Guaranteed Employment	1																			x																								
Pooled with Merit Rating by Com'n Classification & Elective Reserve	1																																						x					
Reserve with ½ Pooling	2													x																					x									
Reserve with ½ Pooling & Guaranteed Employment	1										x																																		
Reserve with Pool of ½ of 1% of Payroll	1																														x													
Reserve and Guaranteed Employment	1																																										x	
2. Size of Firm Covered:																																													
1 or more at any time	1							x																																				
1 or more at $50 per month for 3 months in same year	1																		x																										
1 or more in any 20 weeks	7			x						x										x		x	x									x												x
3 or more at any time	1																													x														
3 or more in any 20 weeks	1		x																																									
4 or more in any 13 weeks	2																							x			x																	
4 or more in any 20 weeks	4													x												x							x						x					
4 or more in any quarter having $500 payroll	1																														x													
5 or more (at same time) in any 20 weeks	1						x																																					
8 or more in any 15 weeks	1											x																																
8 or more in any 18 weeks	1																																										x	
8 or more in any 20 weeks	23	x			x	x			x		x		x		x	x	x	x			x				x			x	x		x			x	x	x	x		x	x	x	x		
3. Contributions:																																													
By employers	44	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
By employees	9	x			x						x			x	x			x						x	x								x											
By state	1							x																																					
4. Excluded Employments:																																													
The State or Instrumentality thereof	41	x	x	x	x	x	x	x		x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Other State or U. S. or Instrumentalities thereof	41	x	x	x	x	x	x	x		x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Agricultural Labor	43	x	x	x	x	x	x	x		x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Domestic Service	43	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Maritime Service	39	x	x	x	x		x			x	x	x	x	x	x	x	x	x	x	x	x	x	x		x	x		x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Employment by Child or Spouse or of Minor by Parent	40	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x		x	x		x	x		x	x	x	x	x	x	x	x	x	x	x	x	x	x
Non-profit, Charitable, etc	43	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x		x	x	x	x	x	x	x	x	x	x	x	x	x	x
Covered by U. S. Unemp. Comp.	38		x	x	x	x	x		x	x	x	x	x	x	x	x	x		x	x	x	x	x	x	x	x		x	x		x	x		x	x	x	x	x	x	x	x	x	x	x
Insurance Agents	5	x												x																					x										
Casual	6							x	x		x							x												x		x												
Teacher or Officer in a Public or Private School or College	4								x															x						x													x	
5. Waiting Period:																																													
A. Period.																																													
3 Weeks within 52	8	x						x		x																				x		x	x						x			x	
2 weeks within 13	9		x			x	x						x								x													x			x				x		x	
2 Weeks within 13 but not more than 3 additional within next 52	9															x	x			x		x			x	x		x			x	x											
2 Weeks within 13 or 5 in any consecutive 65	8			x					x			x									x			x					x									x			x		x
3 successive weeks or 5 accumulated within 52	2																		x								x																	
8 miscellaneous periods	8				x						x			x	x			x						x												x	x							
B. Week Used Above Means:																																													
Week of total unemployment	17		x	x	x	x				x				x	x				x		x	x			x		x					x		x				x					
Ditto or 2 weeks of partial	24	x					x	x	x		x	x	x			x	x	x					x				x	x	x		x	x		x	x	x	x				x	
Miscellaneous	3																			x					x					x													
C. Laws Requiring Waiting Period for Partial Unemployment	26	x		x			x	x	x		x	x	x			x	x			x			x	x	x		x		x	x	x		x		x		x	x	x	x		x	x
6. Qualifying Period:																																													
26 Weeks Employment in 52 or 40 in 104	2									x																								x										
16 Times the Benefit Amount in first 3 of last 4 quarters	7	x		x					x													x	x						x							x							
16 Times the Benefit Amount in first 4 of last 5 quarters	13												x			x	x			x				x	x		x				x	x						x	x	x	x		
13 Weeks Employment in 52	7		x					x							x						x													x			x					x		
15 misc. Periods from 0 to 26 weeks in 52	15				x	x	x				x	x		x				x	x					x			x			x			x			x						x	x
Benefits:																																													

| | | |

A

Supreme Court of the United States

October Term, 1936

No. 837

CHARLES C. STEWARD MACHINE COMPANY,

v.

HARWELL G. DAVIS, COLLECTOR

BRIEF AMICUS CURIAE

INTRODUCTION

This brief is tendered in the interests of George P. Davis. In December, 1936, he petitioned this Court for certiorari to the Circuit Court of Appeals for the First Circuit, to review before hearing in the Circuit Court of Appeals a decision rendered against the petitioner in the District Court of the United States for the District of Massachusetts in favor of the defendant Boston and Maine Railroad and of the intervening defendants the Commissioner of Internal Revenue and the Collector of Internal Revenue for the District of Massachusetts.

The body of the brief submitted herewith is the same brief which was submitted in support of the petition for certiorari.

The appeal was argued in the Circuit Court of Appeals in January, 1937, and is now held under advisement by that Court.

The only issue involved is, whether or not Title IX of Chapter 531 of August 14, 1935 (49 Stat. 620) is an Act of The Congress within its powers under the Constitution of the United States. It is believed that it is identical with the question in the case at bar of Charles C. Steward Machine Company against Harwell G. Davis, Collector.

Since the printing of the brief, the British Privy Council, on January 28, 1937, in Appeal No. 101 of 1936 — *The Attorney General of Canada, Appellant* v. *The Attorney General of Ontario and Others, Respondents*, handed down a decision affirming a decision of the Supreme Court of Canada (In the matter of a Reference 1936 Canada Law Reports, Part VII, page 454) and holding that an imposition analogous to that under Title IX of the Social Security Act is not characteristically a tax for a Dominion purpose and is *ultra vires* of the Parliament of Canada. On this subject there is an evident comparability between the organic act for the Dominion of Canada in its relation to the Provinces, and the Constitution of the United States.

The Act held to be *ultra vires* purported to make levies on employers and employees, to be paid by revenue stamps, to provide a portion of an unemployment compensation fund of which the balance was to be provided by the Dominion. The seemingly controlling words of the opinion are: —

"That the Dominion may impose taxation for the purpose of creating a fund for special purposes and may apply that fund for making contributions in the

public interest to individuals, corporations or public authorities could not as a general proposition be denied."

* * * * *

"In the present case their Lordships agree with the majority of the Supreme Court in holding that in pith and substance this Act is an insurance Act affecting the civil rights of employers and employees in each Province, and as such is invalid."

(Above quotations not compared with official text.)

SUMMARY OF WITHIN BRIEF

1. The state of being of having employees is not property or a privilege (p. 36) or otherwise subject to excise and nothing like it has ever been held by the Supreme Court to be subject to excise (pp. 28–43).

2. The imposition is a capricious confiscation and not uniform throughout the United States (pp. 26, 44–62).

3. The imposition is not within the taxing powers of The Congress, because it is not to pay the debts and to provide for the common defense and general welfare of the Government of the United States (pp. 63–73).

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STATEMENT OF THE CASE

The only issue involved in this case either directly or indirectly is whether or not Title IX of Chapter 531 of August 14, 1935, 49 Stat. 620, is an Act of The Congress within its powers under the Constitution of the United States or is violative of the Fifth Amendment thereof, and the only way that that issue is raised is with respect to payments under that Title IX (R. 18). All parties have so stipulated.

On November 7, 1936, the plaintiff began this cause by filing a bill of complaint in the District Court of the United States for the District of Massachusetts as a stockholder in the defendant corporation to enjoin the corporation from making payments under Title IX of the purported Act of The Congress of the United States commonly known as the Social Security Act, and to that end for the judgment of the Court that this Title IX is not an Act of The Congress within its powers under the Constitution so that an enforcement thereof would deprive the plaintiff, the defendant corporation, and others, of liberty and property without due process of law contrary to the Fifth Amendment. (R. 1–10.)

The corporation was the only original defendant. The Commissioner and the Collector on their own application were admitted as parties defendant.

All parties defendant filed answers which disclosed that the essential allegations of fact of the bill of complaint were true.

On November 17, 1936, all parties filed a stipulation confining the issue as first above stated.

After hearing on the merits on bill and answer, the District Court, the Honorable George C. Sweeney presiding, handed down an opinion and entered a final decree on December 7, 1936 adjudging Title IX to be constitutional and therefore denying the prayer for

injunction and dismissing the bill of complaint. (R. 31).

On December 7, 1936, plaintiff perfected an appeal to the Circuit Court of Appeals for the first Circuit and has entered this appeal therein and said appeal is now depending therein. The plaintiff respectfully submits that Title IX is not an Act of The Congress within its powers under the Constitution and that the decree of the District Court should be reversed and a decree entered for the plaintiff.

THE PLAINTIFF IS ENTITLED IN THIS COURT TO THE RELIEF PRAYED FOR IF SECTION 901 OF TITLE IX OF THE SO-CALLED SOCIAL SECURITY ACT OF AUGUST 14, 1935, CHAPTER 531, OF THE SEVENTY-FOURTH CONGRESS, FIRST SESSION, 49 STAT. 620 IS NOT WITHIN THE POWERS OF THE CONGRESS UNDER THE CONSTITUTION OF THE UNITED STATES.

This suit, begun November 7, 1936, is by a stockholder against a corporation in terms subjected to a tax by Title IX, Section 901, which the defendant corporation proposes forthwith to pay as the terms of this section provide. The plaintiff stockholder alleges that this section is beyond the powers of The Congress under the Constitution of the United States. This constitutional question is the only one in the case. The plaintiff does not allege and prove a case unless he alleges and proves that this section is not permitted by the Constitution of the United States.

United States Code, Title 28, Section 41, Judicial Code, Section 24, gives jurisdiction to the District Court of such a suit if it "arises under the Constitution or laws of the United States." It has been held and said repeatedly by the Supreme Court, and with none of its decisions to the contrary, that in such a situation the suit arises under the Constitution or laws of the United States.

Gully v. *First National Bank in Meridian*, (November 9, 1936) 299 U. S. —, 57 S. C. R. 96, (dictum).

First National Bank v. *Williams*, 252 U. S. 504, 512.

Louisville & Nashville R. R. Co. v. *Western Union Telegraph Co.*, 237 U. S. 300 (dictum).

Siler v. *Louisville & Nashville R. R. Co.*, 213 U. S. 175, 191.

Patton v. *Brady*, 184 U. S. 608, 611.

Miller's Executors v. *Swann*, 150 U. S. 132 (dictum).

Osborn v. *United States*, 9 Wheaton, 738.

A stockholder suit properly invokes this jurisdiction if the Act is unconstitutional.

Carter v. *Carter Coal Co.*, 298 U. S. 238 (semble).

Ashwander v. *Tennessee Valley Authority*, 297 U. S. 288 (semble).

Brushaber v. *Union Pacific Railroad Co.*, 240 U. S. 1, 9.

Ex parte Young, 209 U. S. 123.

Pollock v. *Farmers' Loan and Trust Co.*, 157 U. S. 429.

A person in terms obliged by an attempted invalid Act, to pay money to go into the Treasury of the United States has a right to a decision.

United States v. *Butler*, 297 U. S. 1.

SOCIAL SECURITY ACT, TITLE IX, SECTION 901, DESCRIBED.

Title XI, Section 1105, of Chapter 531, August 14, 1935, 49 Stat. 620, 648, United States Code Title 42, Chapter 7, provides that "This Act may be cited as the 'Social Security Act'. This citation is misleading. This attempted Act is not social. It is anti-social. It attempts to put Society's burden on a fraction capriciously picked. It does not provide security. In Section 901 (U. S. C. Tit. 42 Ch. 7, Sec. 1101) it is not an Act of The Congress within its powers under the Constitution of the United States. The reasons for this assertion are deferred until the section has been described. It is the only section whose validity is involved in this suit. The invalidity is intrinsic in this section. when judged by itself, and also when judged in the setting in which it occurs.

The singularity of the Act is shown by the fact that it begins as "AN ACT To provide for the general welfare by establishing a system of Federal old-age benefits, and by enabling the several States to make more adequate provision for aged persons, blind persons, dependent and crippled children, maternal and child welfare, public health, and the administration of their unemployment compensation laws; to establish a Social Security Board; to raise revenue; and for other purposes." and then proceeds in eleven titles, and ends with the provision that "This Act may be cited as the 'Social Security Act'."

It is not an Act to provide general revenue for the Government of the United States.

Sections 901 to 907 are: —

"IMPOSITION OF TAX

Section 901. On and after January 1, 1936, every employer (as defined in section 907) shall pay for each calendar year an excise tax, with respect to having individuals in his employ, equal to the following percentages of the total wages (as defined in section 907) payable by him (regardless of the time of payment) with respect to employment (as defined in section 907) during such calendar year:

(1) With respect to employment during the calendar year 1936 the rate shall be 1 per centum;

(2) With respect to employment during the calendar year 1937 the rate shall be 2 per centum;

(3) With respect to employment after December 31, 1937, the rate shall be 3 per centum.

CREDIT AGAINST TAX

Sec. 902. The taxpayer may credit against the tax imposed by section 901 the amount of contributions, with respect to employment during the taxable year, paid by him (before the date of filing his return for the taxable year) into an unemployment fund under a State law. The total credit allowed to a taxpayer under this section for all contributions paid into unemployment funds with respect to employment during such taxable year shall not exceed 90 per centum of the tax against which it is credited, and credit shall be allowed only for contributions made under the laws of States certified for the taxable year as provided in section 903.

CERTIFICATION OF STATE LAWS

Sec. 903. (a) The Social Security Board shall approve any State law submitted to it, within thirty days of such submission, which it finds provides that —

(1) All compensation is to be paid through public employment offices in the State or such other agencies as the Board may approve;

(2) No compensation shall be payable with respect to any day of unemployment occurring within two years after the first day of the first period with respect to which contributions are required;

(3) All money received in the unemployment fund shall immediately upon such receipt be paid over to the Secretary of the Treasury to the credit of the Unemployment Trust Fund established by section 904;

(4) All money withdrawn from the Unemployment Trust Fund by the State agency shall be used solely in the payment of compensation, exclusive of expenses of administration;

(5) Compensation shall not be denied in such State to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (A) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; (B) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (C) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization;

(6) All the rights, privileges, or immunities conferred by such law or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal such law at any time. . . .

UNEMPLOYMENT TRUST FUND

Sec. 904. (a) There is hereby established in the Treasury of the United States a trust fund to be known as the 'Unemployment Trust Fund,' hereinafter in this title called the 'Fund'. The Secretary of the Treasury is authorized and directed to receive and hold in the Fund all moneys deposited therein by a State agency from a State unemployment fund. Such deposit may be made directly with the Secretary of the Treasury or with any Federal reserve bank or member bank of the Federal Reserve System designated by him for such purpose.

(b) It shall be the duty of the Secretary of the Treasury to invest such portion of the Fund as is not, in his judgment, required to meet current withdrawals. Such investment may be made only in interest bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. . . .

(c) Any obligations acquired by the Fund (except special obligations issued exclusively to the Fund) may be sold at the market price, and such special obligations may be redeemed at par plus accrued interest.

(d) The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to and form a part of the Fund.

(e) The Fund shall be invested as a single fund, but the Secretary of the Treasury shall maintain a separate book account for each State agency and shall credit quarterly on March 31, June 30, September 30, and December 31, of each year, to each account, on the basis of the average daily balance of such account, a proportionate part of the earnings of the Fund for the quarter ending on such date.

(f) The Secretary of the Treasury is authorized and directed to pay out of the Fund to any State agency such amount as it may duly requisition, not exceeding the amount standing to the account of such State agency at the time of such payment."

Section 905 provides for the payment of the tax into the Treasury of the United States as internal revenue collections and for returns.

"INTERSTATE COMMERCE

Sec. 906. No person required under a State law to make payments to an unemployment fund shall be relieved from compliance therewith on the ground that he is engaged in interstate commerce, or that the State law does not distinguish between employees engaged in interstate commerce and those engaged in intrastate commerce.

DEFINITIONS

Sec. 907. When used in this title ——

(a) The term 'employer' does not include any person unless on each of some twenty days during the taxable year, each day being in a different calendar week, the total number of individuals who were in his employ for some portion of the day (whether or not at the same moment of time) was eight or more.

(b) The term 'wages' means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash.

(c) The term 'employment' means any service, of whatever nature, performed within the United States by an employee for his employer, except ——

(1) Agricultural labor;

(2) Domestic service in a private home;

(3) Service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(4) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;

(5) Service performed in the employ of the United States Government or of an instrumentality of the United States;

(6) Service performed in the employ of a State, a political subdivision thereof, or an instrumentality of one or more States or political subdivisions;

(7) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(d) The term 'State agency' means any State officer, board, or other authority, designated under a State law to administer the unemployment fund in such State.

(e) The term 'unemployment fund' means a special fund, established under a State law and administered by a State agency, for the payment of compensation.

(f) The term 'contributions' means payments required by a State law to be made by an employer into an unemployment fund, to the extent that such payments are made by him without any part thereof being deducted or deductible from the wages of individuals in his employ.

(g) The term 'compensation' means cash benefits payable to individuals with respect to their unemployment."

The eventual 3% imposition under Section 901 is additional to the 6% imposed by Title VIII, Sections 801 to 804.

The one act is in eleven divisions fully interconnected. The sub-titles are: —

Title I.	Grants to States for old-age assistance.
Title II.	Federal old-age benefits.
Title III.	Grants to States for Unemployment Compensation Administration.
Title IV.	Grants to States for aid to dependent children.
Title V.	Grants to States for maternal and child welfare.
Title VI.	Public Health work.
Title VII.	Social Security Board.
Title VIII.	Taxes with respect to employment.
Title IX.	Tax on employers of eight or more.
Title X.	Grants to States for aid to the blind.
Title XI.	General Provisions.

Most of the contents of the various Titles need not be described. The only Titles now involved are the general one, and Titles III, VII, and IX.

Title III — "Grants to States for Unemployment Compensation Administration" — purports to make an appropriation (Sec. 301) for the purpose of assisting the States in the administration of the States' own unemployment compensation laws. It makes these assistance payments only in those States which have an unemployment compensation law approved by the Social Security Board established by Title VII as provided in Title IX. The amounts are such as the Board determines to be necessary for the proper administration of the law by the State. The Board is furnished these elements for the basis of its determination — the population of the State, an estimate of the need of persons covered by the State law and of the cost of the proper administration of such law, and "such other factors as the Board finds relevant". The Congress has not indicated how the population of the State, or the number of persons covered by the State law, shall affect the Board's determination or given any guide to the Board by which the Board may determine what is the proper cost of the administration of the State law, or any suggestion which may advise or lead the Board in determining what factors should be taken into consideration, or what weight should be given to those factors. Except for the prohibition that the total

certifications shall not exceed the total appropriation, the legislative question of how much of this administration appropriation shall be paid to each State is left to the judgment of the Board.

The Board may not approve the law or certify for payment to a State unless the Board finds that the State law includes these features, namely:— (1) methods of administration which the Board finds to be reasonably calculated to insure full payment of unemployment compensation when due; (2) payment of this compensation solely through public employment offices in the State or such other agencies as the Board may approve; (3) opportunity for a fair hearing before an impartial tribunal before individual claims for compensation are denied; (4) all monies of the State fund are forthwith on receipt to be paid to a person who is not an officer of the State, namely, to the Secretary of the Treasury of the United States, to be merged in the Unemployment Trust Fund of the United States; (5) the expenditure of all money requisitioned by the State agency from this Fund in the payment of unemployment compensation exclusive of expenses of administration; (6) the making of such reports by the State as the Board may from time to time require with no indication by The Congress of the content of the reports on which the Board in the exercise of its legislative judgment may insist; (7) making available to any United States agency charged with the administration of public works or assistance, the name and other information about the unemployment compensation received.

If the Board, after notice and hearing, finds that the State is denying compensation to individuals entitled to it, or is failing, in the opinion of the Board, to comply with any other of the above provisions, the Board is required to stop further payment certification to the State.

A Federal Board thus determines the destiny of the State in the administration of the State's functions, and the State may not keep its own fund except at the penalty of getting no administration assistance such as other States get, and of depriving its citizens of any relief from the impositions later described.

Title VII, Section 701, provides for the establishment of a Social Security Board. This is to perform the duties imposed by the Act, including, among others, "the duty of studying and making recommendations as to the most effective methods of providing economic security through social insurance, . . . " [Sec. 702].

The employers within a State **cannot avoid** the impositions of Section 901 by inducing their legislators to pass **the kind of an unemployment law which the State wants.** The only escape is by conforming to the will of the Social Security Board exercised in conformity to the rules which the men in a legislative body foreign to the State, — that is, The Congress of the United States, and in the Presidency, — have attempted to dictate.

If the legislators of the State bow to the will of the Board, and of the men for the time being in Congress and in the Presidency, eventually the employers of eight or more in industry not within the exceptions pay one-tenth of three percent and the employers in a State whose legislators decline so to yield, pay three percent. The State is a non-conformist unless it sends its entire unemployment fund as fast as received, to the Secretary of the Treasury of the United States regardless of whatever reasonable provisions may have been made by the constitution of the State as to where its funds shall be kept.

The State is a non-conformist if it attempts to have the unemployment benefits payable at once in this period of hardship, without waiting two years.

The State is a non-conformist if it exercises its judgment to be that the benefits should not be paid to those offered a position vacant because of a strike, lock-out, or other labor dispute; or that an employee should in such time of stress work under less favorable conditions than those prevailing in the locality; or that employment should not be degraded because it would involve membership in a company union or temporary non-unionism. The **State legislators are not left free to exercise their judgment** as to the wisdom or folly of these requirements. In the exercise of their sovereign functions they must take the dictates of the men chosen to exercise the governing functions of another sovereignty.

This attempted statute is not one to provide revenue. No one reading the statute alone, in the light of the common knowledge of the day, and of the proclamations of purpose that have gone out through the community, if the reader was willing to impute honesty of purpose to The Congress, could fail to observe from his reading that the imposition in Section 901 is not made to swell the general revenue of the United States. To let that money or its representative equivalent go eventually away from the purposes of the particular statute would be a nauseating breach of government faith. The men in Congress ordered that this Act be named the "Social Security Act." The citizen of the United States, untutored in the refinements of legal phraseology and having, himself, an intellect which works honestly, could entertain no

doubt but that Congress meant by the phrase, "to raise revenue," revenue for the ends set forth in the rest of the Title. If the men in Congress could be polled on the subject it is confidently asserted that no one of them would say that he really meant this levy to swell the general revenues of the United States disconnected with the purposes in this Title. This is obvious from the text of the attempted Act. This is emphasized by the circumstances and reports during its course through Congress. The reports make this explicit.

Section 901 is not to raise revenue at all. It is not in contemplation that it will produce substantial net revenue. It does not provide for any unemployment compensation to anyone. The employers in the non-subservient States must pay the imposition but the employees get no benefits from the imposition either through the States or directly from the United States. No benefits go from the fund. The State must provide these.

If the imposition was intended to produce revenue to furnish unemployment insurance benefits and not as a penalty on recalcitrant States, it would have been devoted to paying unemployment benefits and not to leaving without benefits the unfortunate employees in an unyielding State, which would not succumb to the importunities for this legislation, coming from its own unemployed citizens or dwellers.

This Section says to the States: Do as I tell you, or pay 100% for your recalcitrancy.

The attempted statute formulates an abracadabra to ward off an imposition by the United States. It is formulated in the hope that the sovereign States will submit to exercise their sovereignty to utter the formula in the fear that there is no other way in which certain employers within the States can ward off this heavy imposition.

The Report [No. 964] of Select Committee of Senate to Investigate Unemployment Insurance in the 72nd Congress, 1st Session, in the course of reporting adversely and dealing with the constitutional questions, says: — "We are quite aware there is perhaps a way for Congress to circumvent this constitutional barrier" (p. 49).

"We have already outlined some of the objections which to us are apparent and which have led us to the conclusion that the subject of unemployment insurance is not within the sphere of congressional action" (p. 51).

This same Report calls attention to the fact (p. 30) that the foreign unemployment insurance plans are based on an entirely different concept of the relation of the central state to the people.

The way in which the States have yielded to the pressure of the penalty which the men in Congress have attempted to impose, is well illustrated in the final report of June 4, 1935 to the General Court of Massachusetts [House No. 2225] by the Special Commission appointed to make an Investigation of Unemployment Insurance, Reserves and Benefits. The Resolve of May 24, 1935 reviving the Commission, contained these recitals: —

"*Whereas*, There is reason to believe that the Congress of the United States will, at its present session, and while the general court of this Commonwealth is in session, enact a law providing for federal co-operation with the several states in providing unemployment insurance; and

"*Whereas*, Under the circumstances, better results will be obtained and with no material delay if said special commission formulates unemployment insurance laws for this Commonwealth after the attitude of the federal government on this matter is known; . . . " (Report, pp. 1 and 2).

The report says (p. 3): — " . . . If Congress acts while these committees are studying the bills recommended, the legislators will be in a position to make the provisions conform to Federal requirements. It is the Commission's belief that the recommended draft **will come within any limitations that may be set by Congress.** (Type not heavy in original)

"If the Legislature decides to pass a state law irrespective of what action Congress may take at the current session, it may do so safely because of the safety clause suggested in the final section of the accompanying draft, making the financial provisions of the act operative when the Federal law begins to function or when eleven of the industrial States enact laws similar to the one in Massachusetts, so that the burden on industry in those States will approximate the burden placed on industry in this Commonwealth. The Federal bill as it now stands makes the law operative as of January 1, 1936. If Congress acts later this summer, and this Commonwealth fails to adopt an unemployment insurance law to become operative at the same time as the Federal law, **the Commonwealth may find itself seriously penalized** in respect to its share of any tax or grant distributed to the participating States." (Type not heavy in original.)

When these words were used the Social Security Act, so-called, as hereinbefore stated, had gone through the House and received a favorable report with amendments from the Senate Committee on Finance.

An attempted act which in terms is not to be effective if the attempted act of Congress to penalize recalcitrant states is not effective, is a legislative declaration that public policy requires that Massachusetts have no such act by itself.

If each one of the forty-eight sovereign States would submit to the dictation so that the net general revenues

of the United States were not increased at all, the end sought by the men in Congress and in the Presidency would be accomplished, completely. In this sense, every dollar from this imposition, which gets into the Treasury, measures, by so much, the short-comings of the device adopted to accomplish the end for which the imposition is made. Any money received spells failure pro tanto.

The enthusiasm of the men in Congress in formulating this abracadabra has led them to seek to force a State for an avenue of escape from the penalty, to enact apparent legislation by which the sovereign State, in this extremity, would violate not only its own constitution but also the Constitution of the United States.

The State act upon which the men in Congress insist, as the only way to avoid the penalty, is **an excessive minimum wage law.** The attempted law says to an employer: — Even if you pay a reasonable wage and a living wage, you must as a minimum wage give also an unemployment insurance policy. It is not enough that you have paid your employee a high enough wage so that he can buy himself unemployment insurance or save up for periods of unemployment. He may waste that. We fix as one item of the minimum wage which you must pay, an insurance Policy against moneyless unemployment. It makes no difference that the Supreme Court has said that a minimum wage law is unconstitutional. That is the kind of a law that we enact.

The imposition attempted by Section 901 is not one to provide general revenue.

THE CONSTITUTION OF THE UNITED STATES

"WE the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I.

Sect. 1. All legislative powers herein granted shall be vested in a congress of the United States, which shall consist of a senate and house of representatives."

. . .

"Sect. 8. The congress shall have power — to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States; — to borrow money on the credit of the United States; — to regulate commerce with foreign nations, and among the several states, and with the Indian tribes; — to establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States; — to coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures; — to provide for the punishment of counterfeiting the securities and current coin of the United States; — to establish post offices and post roads; — to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries; — to constitute tribunals inferior to the supreme court; — to define and punish piracies and felonies committed on the high seas, and offences against the law of nations; — to declare

war, grant letters of marque and reprisal, and make rules concerning captures on land and water; — to raise and support armies, but no appropriation of money to that use shall be for a longer term than two years; — to provide and maintain a navy; — to make rules for the government and regulation of the land and naval forces; — to provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions; — to provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by congress; — to exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock yards, and other needful buildings; — and to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof."

"Sect. 9. . . .

No capitation, or other direct tax, shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken. . . ."

"ARTICLE VII.

The ratification of the conventions of nine states, shall be sufficient for the establishment of this constitution between the states so ratifying the same."

AMENDMENTS

"Art. V. No person shall . . . nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation."

"Art. IX. The enumeration in the constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

"Art. X. The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."

"Art. XVI. The congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration."

SECTION 901 IS NOT WITHIN THE POWERS OF THE CONGRESS UNDER THE CONSTITUTION OF THE UNITED STATES.

There are three independent reasons for this, each sufficient in itself without any assistance from the other, namely: —

1. The imposition is not an excise in character but is a capricious confiscation.
2. The imposition is not uniform throughout the United States and is capricious.
3. The imposition is not to pay the debts and provide for the common defense and general welfare of the United States.

Sections 901, 804 and 802, if enforcible, would take from a limited class of employers property, — that is, money, — to the extent of 9% of their pay rolls and put that money into the Treasury of the United States.

There are only two ways in which by due process of law the Nation may take property from the peoples of the several States to put into the Treasury of the Nation, whether ear-marked there for a particular purpose or available for general purposes. One is, by eminent domain; and the other is, by taxation. For the Nation to take property not in conformity to the requirements for eminent domain or taxation is to take it without due process of law and without just compensation in violation of the Fifth Amendment.

It is to be assumed that no claim will be made that these sections could be supported as an exercise of eminent domain.

They profess expressly to proceed under the taxing power.

The Congress has no powers of taxation except those given by the Constitution. Therein, the only enabling power is that "to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States".

This power is curtailed by the prohibition against any capitation or other direct tax unless in proportion to the census.

The Sixteenth Amendment relieves from this requirement where the tax is laid on incomes.

The impositions under Section 901 do not conform to the requirements for an excise or any other tax, for the three reasons above stated.

1. The imposition is not an excise in character but is a capricious confiscation

The so-called Social Security Act is not social. It is anti-social. It attempts to put Society's burden on a fraction capriciously picked. It does not give vested security. It is not an Act of The Congress within its powers under the Constitution.

It is an attempt to transfer the State's burden to care for the unemployed within the State by taxes on wealth, to a fraction of the employers within the State who are faultless of the production of unemployment. Reason may be searched in vain for a justification, or even for an excuse, for relieving wealth, whether in capital or in income, from taxation to meet this burden which belongs on the State and in order to be borne socially should fall on the wealth within the State. The attempt is not social. It plays into the hands of the property-owning class.

Herein is the insurmountable distinction between an unemployment benefit and a workmen's compensation allowance for industrial accidents. These are directly the product of the industry chosen to cover its own product. Ceasing to be employed is not the product of the calling in which a man is engaged. He comes to unemployment just as soon if he works as a farm laborer, or as a domestic servant, or sooner if he never can work at all. Before the Workmen's Compensation Acts became the law, employers in industry were by the common law in a large number of cases virtual insurers. They were liable without limit for the negligence of their agents however carefully chosen. The new law merely substituted for the common law — an insurance liability more extended in scope and more limited in amount of benefits.

Even so, an able four-ninths of the Supreme Court deemed it beyond legislative power.

> *Mountain Timber Co.* v. *State of Washington*, 243 U. S. 219, 246.

This is not to be overlooked in marking the limits of the principle which the majority has settled. The principle itself has no relation to the question whether it is the wealth of the whole community or the non-causing employer or the non-causing industry which should bear the burden of providing for those who have gone into unemployment.

Many an employer has no wealth, and has liabilities equal to all his assets. It is capricious to pick the employer to pay what wealth should pay. A property tax, an income tax, an excess profits tax, a profits tax, a surplus tax, a tax on property in manufacture, in trade sale, in retail sale, can find a support which is wholly lacking for an attempted tax on pay roll out-go in the activities of manufacturing, transportation, and commerce.

This attempt would be capricious if it extended the imposition on all employers. There is an additional caprice in picking on a fraction of them; but this can be discussed better when dealing with lack of uniformity, in the succeeding section of this brief.

The attempt is capricious in seeking to subject employers to a minimum wage law notwithstanding the decisions in *Morehead* v. *People of the State of New York*, 298 U. S. —, 56 S. C. R. 918, 57 S. C. R. 4, and *Adkins* v. *Children's Hospital*, 261 U. S. 525. The attempted Act is in essence **an excessive minimum wage law.** It says to an employer: — Even if you pay a reasonable wage and a living wage you must as a minimum wage give also an unemployment policy. It is not enough that you have paid your employee a

high enough wage so that he can buy himself protection from unemployment or save up therefor. We fix as one item of the minimum wage which you must pay, an insurance policy for a period of unemployment.

Even if what has been said heretofore in this section were not so, and this imposition were not capricious, still, it would not be an excise or other tax within the powers of The Congress to impose.

It seems evident that it is no kind of a tax within the powers of The Congress if it is not an excise. The attempt to levy it is as an excise.

The attempted imposition is not an excise within the meaning of that word as it was adopted in 1788 and remains in the Constitution.

"Excise" had a well understood meaning in England and in the Colonies for at least one hundred and forty years before it was used in the Constitution. It meant an inland levy on selected tangible property, or upon the owners of it, because of the activity in which the property was moving. The motion might be manufacture; it might be intermediate sale; it might be ultimate sale commonly amounting to consumption. The antithesis was the direct tax upon property in general, certainly land, when taxed on a rate fixed by its static appraised capital value and possibly when measured by its annual unwrought return in rent, income or products, and, debatably, upon personal property so appraised or judged.

Both the direct tax and the excise were prominently property taxes, — one regardless of its activity or inactivity, and the other taking that activity into consideration.

Dr. Johnson, in the Third Edition of his Dictionary in 1766, defined "excise" as "a hateful tax levied upon commodities, and adjudged not by the common judges of property". In the same time and place, he defined

"commodity" as "interest, advantage, profit, convenience of time or place, wares, merchandise".

"Commodity" suggests as the principal thought, merchandise. If a town meeting were urged to place a tax on commodities, the voters attending would think of whisky, ale, tea, and not of incorporeal rights.

Adam Smith in 1776, in "The Wealth of Nations", says: "The duties of excise are imposed chiefly upon goods of home produce destined for home consumption. They are imposed only upon a few sorts of goods of the most general use. There can never be any doubt either concerning the goods which are subject to those duties, or concerning the particular duty which each species of goods is subject to. They fall almost altogether upon what I call luxuries, excepting always the four duties above mentioned, upon salt, soap, leather, candles, and, perhaps, that upon green glass."

The Massachusetts constitution of 1780 indicated direct taxes to be the normal source of revenue but gave the legislature authority to impose "reasonable duties and excises, upon any produce, goods, wares, merchandise, and commodities, whatsoever". It is submitted that these words "reasonable" and "produce" and those following it were not set out as limitations on the kinds of excises. They were there as clarifications of the intrinsic meaning of the word. "Commodities" was used in association with other words descriptive of tangible things. No intention to add more by the word "Commodities" is to be inferred. "Merchandise" and "wares" were already included in "goods". There is no more tautology in the addition of "commodity" to mean no additional class than in the addition of "merchandise" and "wares" to "goods". These two words could not add a class which was not already covered by "goods".

The Constitutional Convention of New York in 1788 urged its representatives to obtain several amendments to the Constitution one of which was, "That the Congress do not impose any excise on any article (ardent spirits excepted) of the growth, production, or manufacture of the United States, or any of them." (1 Elliot's Debates on the Federal Constitution, p. 329.) These were the words of men who understood excises as falling on tangible things.

In the Massachusetts Convention in 1788, Mr. Symmes, in speaking to this phrase, said: — " . . . Congress may lay an impost on the produce and manufactures of the country, which are consumed at home." (2 Elliot's Debates, p. 72.)

Luther Martin in 1788 said: — "By the power to lay excises, — a power very odious in its nature, since it authorizes officers to go into your houses, your kitchens, your cellars, and to examine into your private concerns, — the Congress may impose duties on every article of use or consumption, on the food that we eat, on the liquors that we drink, on the clothes that we wear, the glass which enlightens our houses, or the hearths necessary for our warmth and comfort." (1 Elliot's Debates, p. 368.) If this forceful gentleman had conceived of the idea that Congress could lay an imposition on the natural universal right to employ a consenting wage earner or the natural universal right of the wage earner to obtain wages by the consent of the employer, he would have mentioned it at this point. Evidently he conceived of an excise as an imposition on tangible property.

In the New York Convention in 1788, Chancellor Livingston said: "We may naturally suppose that wines, brandy, spirits, malt liquors, &c., will be among the first subjects of excise." (2 Elliot's Debates, p. 341.) He said this, when speaking to the proposed

amendment to prohibit excises on manufactures of the United States. He was talking of an imposition on tangible property.

In the Virginia Convention in 1788, Mr. Nicholas said: "We are next terrified with the thought of excises. . . . They are a kind of tax on manufactures." (3 Elliot's Debates, p. 243.)

In the "Debates in the Congress of the Confederation" in 1783, Mr. Wilson, in discussing the probability of an excise, said that wine and imported spirits had borne a heavy excise in other countries and might be adopted in ours; that coffee is another object which might be included. (5 Elliot's Debates, p. 40.)

Hamilton speaks of the excise as "Taxes on Articles of Consumption". (The Federalist, No. 21, Dec. 12, 1787, p. 182.)

So says Ellsworth in the Connecticut Convention (2 Elliot 192). It is the property which is taxed, and not the act of consuming it. The short-cut expression "consumption taxes" generally means taxes on goods designed for early consumption and manufactured, sold, and bought for that purpose (The Federalist, p. 267, 275).

Gallatin speaks of it as an excise on "consumable commodities". (Writings of Gallatin, p. 73) Evidently he means by "commodities" tangible articles. Men do not "consume" incorporeal rights.

Hume, in his history of England published approximately thirty years before the adoption of the Constitution, in speaking of the situation at the time of the long Parliament when the excise novelty came in, said: — "So extremely light had government hitherto lain upon the people, that the very name of *excise* was unknown to them; and among the other evils arising from these domestic wars was the introduction of that *impost* into England. The parliament at Westminster

having voted an excise on beer, wine, and other commodities, those at Oxford imitated the example and conferred that revenue on the King." (5 Hume, Ed. of 1861, p. 269.) It was an imposition on these commodities used in the sense of goods. It was an impost laid on tangible property.

Clarendon in the History of The Rebellion in England (Vol. II, p. 453) said substantially the same. He also says "This was the first time that ever the name of payment of excise was heard of or practised in England."

Commodity was used in the same sense that in later days it has been used in transportation. A commodity rate as distinct from a class rate, is a rate on a particular kind of merchandise.

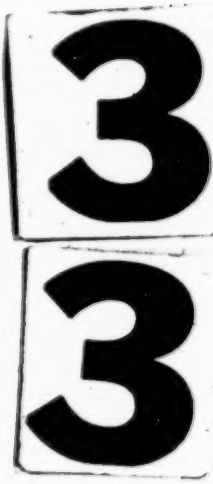
Blackstone, twenty-two years before the adoption of the Constitution, after speaking of other forms of taxation, said: "Directly opposite in its nature to this is the excise duty; which is an inland imposition, paid sometimes upon the consumption of the commodity, or frequently upon the retail sale, which is the last stage before the consumption." (1 Blackstone, p. 308.)

Evidently "commodity" is here used in the sense of tangible property.

Encyclopedia Britannica, in the Third Edition, 1797, gives Blackstone's definition as still the definition.

Even more convincing than the contemporary definitions for 1788, are the many usages exemplary of the real character of an excise as the word then was used in the communities contracting by the Constitution.

Overwhelmingly, and it would seem safe to say universally, the imposition was on tangible property usually articles of merchandise for current use, often described as "commodities".



Early British Excises

What has been called the first British excise act — that of March 28, 1643, imposed an impost on articles of consumption listed in a schedule, such as ale, beer, cyder, perry, strong waters, and other described articles.

In January, 1644, this was extended to other "commodities made or growing in England not formerly charged with excise". It was these classes of merchandise that were called "commodities".

They were indifferently described as "commodities" and as "goods".

On the return of Charles, the laying of excises on selected goods continued. It was on commodities, — meaning, by that term, merchandise — in manufacture, trade or consumption.

Meanwhile, the term "excise" had come to get a meaning in the Colonies, by use there.

Excises in New York before 1788

By October 23, 1713, New York had "An act for laying a duty on Goods sold by Auction, vendue or out-cry." (Vol. I of "The Colonial Laws of New York from the Year 1644 to the Revolution, Transmitted to the Legislature by the Commissioners of Statutory Revision, Pursuant to Chapter 125 of The Laws of 1891", p. 789.)

May 16, 1691, there had been laid "an Excise upon all Brandy, Rum and other Distilled Liquors to be retailed within this Province under fifteen gallons" (Vol. I, same publication, p. 248). This act included an excise on other wines and liquors.

December 23, 1775, there is "An Act to Regulate the Collecting the Duty of Excise on Strong Liquors retailed in this colony". (Vol. IV, same publication, p. 1.)

Other similar acts laying an excise on liquors followed from this time to 1784. (Vol. I, Laws of the State of New York passed at Sessions of the Legislature held in the Years 1775 to 1788, p. 109, 660.)

December 1, 1756, an excise on tea was imposed. (Vol. IV, Colonial Laws, *supra*, p. 105.)

The expression "excise" in New York in this period appears to be confined to inland duties or imposts upon commodities in the sense of "goods".

Excises in Pennsylvania before 1788

February 18, 1777 there is "An act authorizing the Collectors of the excise due and to become due on Spirituous Liquors to collect the same and directing the Mode of obtaining Tavern and other Licenses for other purposes therein mentioned." (IX Statutes at Large of Pennsylvania, 1776–1799, p. 55.)

Excises in Massachusetts before 1788

Nearly contemporaneously with what has been asserted to be the first excise law in England, the Colony of New Plymouth in 1646 enacted "That these excises shalbe imposed to be payd by all that are lycensed to retayle wines strong water and y^{t} sell Tobaccoe as followeth viz^{t} upon every gallon of Spanish wine eight pence . . . " This is followed by a list of other strong waters, wines, tobaccos, and certain fish. This excise was on the "goods". (Plymouth Colony Laws, 1836, p. 85.)

June 24, 1692, the Massachusetts Colony enacted that there may be paid "an excise upon all wines, brandy, rhum and other distilled liquors, perry, beer, ale, cyder, and metheglin, that shall be sold [by] retail" to be paid by the retailer (Vol. I, Acts and Resolves of the Province of Massachusetts Bay, Chapter 5, p. 32).

Thereafter follow many acts, imposing an excise on "goods" (Vol. I, same, pp. 57, 272, 391, 475, 527, 662, 738; Vol. II, same, pp. 203, 849; Vol. III, same, pp. 495, 568, 750; Vol. IV, same, p. 219).

In this Colony it would appear by investigation of the many laws in the four volumes that the term "excise" was confined to this class of taxes.

The last reference above cited from the Laws of The Colony was in the year 1759.

The usage continued in the State. The Act of November 1, 1781, Chapter 17, was "An Act laying certain Duties of Excise on certain articles therein mentioned" (Vol. I, Laws of Massachusetts, p. 60). Others in like tenor followed in 1782 and 1783 (Same volume, pp. 62, 78, 85; Laws and Resolves of 1782, Chapter 33, p. 92).

It is respectfully submitted that the prior and contemporaneous utterances overwhelmingly tend to the conclusion that an excise was in character an inland duty or impost on a tangible commodity in manufacture or in sale either in the course of trade or for consumption. It was not cut out of the activity. It was cut out of the goods. It did not rest on the activity. It rested on the goods, and was payable for the quantum of goods by the manufacturer, the seller, or the purchaser of them.

This "page of history is worth a volume of logic" (Mr. Justice Holmes, 256 U. S. 349).

If this position is wrong, and the term "excise" included an imposition on something other than selected tangible property or on the owner or handler of it, because of the property, it becomes necessary to define what other subject it covered according to the common meaning of the day. It is respectfully submitted that it is inconceivable that the intelligent people of the common run in the thirteen States could have under-

stood that the word included an imposition on the state of being of exercising the universal natural right to employ, for wages, other men who consented to that employment, in a manner not injurious to the public good.

Supporters of this tax have urged that it is a tax upon a privilege. **There is no privilege.** The state of being on which the imposition is made is not derived from government or from public authority in any manner. Privilege contrasts with common natural opportunity. Contrast the privilege to do business without liability for debts, as in corporate form. Any dictionary of common meanings shows that "privilege" as used in this context means something not of common right.

The derivation confirms this. Privilegium was a law against or in favor of an individual. It was compounded of lex, a law, and privus private.

There is nothing here present, even of an incorporeal nature, to satisfy the term. If this is a privilege, — breathing, sleeping, or holding decorous discussion of the weather may have an excise imposed on it equally well.

It is believed that no statute, of the United States or of any State, a party to the Constitution, lends the slightest color to the contention that there is something here which is subject to excise as that word is used in the Constitution.

If this imposition is not in character an excise, it is submitted that there is no occasion to go further. It is announced in the attempted Act as an excise tax. It does not conform to the requirements for a valid tax of any other kind, and it is not an excise.

There must be some limit to what is an excise.

Presumably the having of lungs with which to breathe, and nerves which permit sleep, will be conceded to be something which Congress cannot excise,

and that if an attempted tax thereon could be supported it must meet the requirements of a capitation tax. On the other hand, a whisky tax is a foremost example of an excise. Between the two there is a boundary line which the men in Congress may not cross, and on crossing which they will not be acting as Congressmen. This case involves no necessity to set that boundary line. It is sufficient, if the Court observes that this particular imposition is beyond the bounds.

The word "excise" had a meaning in 1788, when the contracting thirteen States used it in their compact. For present purposes, that is the meaning which it has today, and the only meaning which it can have. Neither the Court nor The Congress is empowered to change that meaning by interpretation or expansion. Such procedure would mutilate the contract which was made.

Undoubtedly properties of modern times — as, for example, automobiles, — never thought of in 1788 may come within the meaning which the word had in 1788. But, if the state of being, of having individuals in a man's employ, — a thing of a character which existed in 1788, — did not then come within the meaning of the word, it is not there now.

The unlettered experienced carpenter set to saw a pile of boards to a given length, has found that if he saws each from the last one before, in most cases, by a process of negligible errors, he has created a grave one, and that the boards of his later sawings are wrong. Accordingly, he has adopted the policy of sawing them all by the application of his first one, which he marks as a pattern. It is not presumptuous to urge the worth of this example of the unlettered carpenter upon this cultured and enlightened court.

The meaning in the Constitution of the word "excise", is the meaning that it had in 1788 in common

usage of the common run of men in the thirteen contracting States who made the contract in State conventions of representatives chosen by those men of the common run. Judges and lawyers and statesmen formed a very small minority of the common men in the thirteen contracting groups. The understanding of the eminent and revered draftsmen and promoters of the Constitution is of no value to fix the meaning in any respect at variance with the common usage. They were not the ones who made the contract.

The tax here attempted is novel. A brief on it may seek first with reason the Court's own application of the Constitution to the proposal, in the exercise of its own skillful judgment on an original question, regardless of what other Justices have said at other times. Decorum does not require that the Justices be approached on this novel question as a congregation of mere reporters of the language used by other Justices, in disposing of other questions.

Turn next from this appeal to the original judgment of this Court on this novel question. The Court now is asked to recall and to observe that nowhere in the precedents of the prior decisions and language of the Supreme Court of the United States is there any indication that this attempted tax is within the powers of The Congress, and that there is much in those decisions and in that language to show that such a tax is not within those powers.

An attempted act may be clearly without the powers of The Congress and a particular litigant nevertheless may have no right to invoke the judgment of the Supreme Court of the United States.

Massachusetts v. *Mellon*
Frothingham v. *Mellon* } 262 U. S. 447.
Florida v. *Mellon*, 273 U. S. 12.

Consequently, the fact that the validity of appropriation of the money of the United States in questionable ways has not been questioned before that Court, carries no implication that the appropriations were lawful, or approved by the people of the United States.

It may well be, also, that many unlawful appropriations have been thought so favorable to those who might otherwise have questioned them, that they would discourage any attempt to prevent them.

It is only in the last twenty years that inland taxes of the United States have become so burdensome, that it has been worth the extensive effort of many people, to prevent unlawful appropriations.

A person in terms obliged by an attempted invalid act to pay money to go into the Treasury of the United States, has a right to a decision.

United States v. *Butler*, 297 U. S. 1.

In considering the validity or not of a novel tax, attempted, the Court is not foreclosed from exercising its own judgment, by the misunderstandings of The Congress or of the Supreme Court of the United States, even if they have persisted unabated for a century.

Pollock v. *Farmers' Loan and Trust Co.*, 157 U. S. 429.

An imposition on a particular class of tangible property, in manufacture, use, gift, bequest, or sale, may be sustained as an excise if it meets the other constitutional requirements, including that the end is to provide revenue for the general welfare of the Government of the United States and that the selection is not capricious or the tax anti-uniform.

Magnano v. *Hamilton*, 292 U. S. 40.
Bromley v. *McCaugn*, 280 U. S. 124.

N. Y. Trust Co. v. *Eisner*, 256 U. S. 345.
Billings v. *United States*, 232 U. S. 261.
McCray v. *United States*, 195 U. S. 27.
Thomas v. *United States*, 192 U. S. 363.
Cornell v. *Coyne*, 192 U. S. 418.
Spreckels Sugar Ref. Co. v. *McClain*, 192 U. S. 397.
Patton v. *Brady*, 184 U. S. 608.
Treat v. *White*, 181 U. S. 264.
Knowlton v. *Moore*, 178 U. S. 41, 84.
Nicol v. *Ames*, 173 U. S. 509.
Springer v. *United States*, 102 U. S. 586.
Railroad Co. v. *Collector*, 100 U. S. 595.
Scholey v. *Rew*, 23 Wall. 331.
Veazie Bank v. *Fenno*, 8 Wall. 533.
Pacific Ins. Co. v. *Soule*, 7 Wall. 433.
License Cases, 5 Wall. 462.
Hylton v. *United States*, 3 Dallas, 171.

Important documents, and paper, particularly commercial paper are tangible and valuable because of that fact.

Patton v. *Brady*, 184 U. S. 608, 617.
Cook v. *Pennsylvania*, 97 U. S. 566.

It has been held in at least one case that a franchise is a sufficiently palpable kind of property to permit an excise of it.

Flint v. *Stone Tracy Co.*, 220 U. S. 107, 155, 162.

A tax does not cease to be an excise and become an income tax, merely because it is placed on income, if that is under the circumstances a reasonable criterion for the rate or amount of tax which should be imposed on that property. Income received is property.

Flint v. *Stone Tracy Co.*, 220 U. S. 107.

The Supreme Court of the United States never has held that the natural harmless state of being or natural harmless conduct privileged or unprivileged is subject to excise. Where the special privilege was a franchise derived from government and long recognized as itself a piece of property, although intangible, and produced property, *Flint* v. *Stone Tracy Co.*, permitted its excise.

This does not suggest that the state of being an employer with the consent of the employee in a common harmless calling is a privilege, or as such or otherwise, is property or anything but a natural universally attainable state not derived from government.

These decisions of the Supreme Court of the United States are supported by the prevailing and confirmed interpretation of the word "excise" by the Supreme Judicial Court of Massachusetts throughout the existence of the State, and recently with emphasis, that it is an imposition on property in industrial or trade movement whether the word be used in the Constitution of the United States or in the constitution of the Commonwealth of Massachusetts.

Opinion of the Justices in 1933, 282 Mass. 619, *and many cases therein cited.*

The natural operation of employing with the consent of the employee, is not a privilege or any other type of property, tangible or intangible, which may be subjected to excise.

Opinion of the Justices, March 27, 1929, 266 Mass. 592, 595, *semble.*

" . . . we are not aware of any case in which an excise tax is shown to have been imposed upon the use of one's hands in simple manual labor, or upon the making of a simple contract, without the use of any auxiliary method, device, or machinery that might be

availed of to establish one's rights under the government in courts and elsewhere. . . "

Opinion of the Justices, Knowlton, Morton and Braley, in 1908, 196 Mass. 624.

"In this Commonwealth, in dealing with the term 'commodity,' it has been held that an ordinary 'agreement or mode of transacting business' is not within its meaning, and cannot be made the subject of an excise tax. . . " (Same page)

" . . . the word 'is not broad enough to include every occupation which one may follow in the exercise of a natural right, without aid from the government, and without affecting the rights or interests of others in such a way as properly to call for governmental regulation'." (Same page)

Property may not be taken by government from one for another even for public advantage or welfare without just compensation.

Louisville Bank v. *Radford*, 295 U. S. 555, 601, 602.
United States v. *Butler*, 297 U. S. 1.
Railroad Retirement Board v. *Alton R. R. Co.*, 295 U. S. 330.

It makes no difference that it is done under the guise of a tax or is the product of a tax.

Loan Association v. *Topeka*, 20 Wall. 655.
Calder v. *Bull*, 3 Dallas, 386.
Miles Planting Co. v. *Carlisle*, 5 Ct. of Ap. D. C., 138, 146.

Even if a tax is levied expressly for the purpose of obtaining general revenue, if it appears "in the light of its history and of its present setting" that it is for a

purpose which the Constitution does not permit the law-making body to accomplish, the tax is bad.

> *Grosjean* v. *American Press Co. Inc.*, 297 U. S. 233, 250.

Heretofore, *Spreckels Sugar Refining Company* v. *McClain*, 192 U. S. 397, has been put forth for the defendants Helvering and Welch as their main authority to support the contention that the attempted levy at bar is an excise within the Constitution. This decision contains nothing at variance with the definition of the word "excise" for which the plaintiff contends. The tax in the cited case (p. 398) was expressly "upon the gross annual receipts, in excess of a named sum, of every person, firm, corporation or company carrying on or doing the business of refining sugar". The sole question was whether this was a direct tax requiring apportionment. It was not. It was on receipts of property. There is nothing in the case even remotely to suggest that an excise may be laid on the state of being of having employees.

Therefore, however high the motives, this attempt by the men in Congress to take from a fraction of employers the money to be given to the Treasury of the United States to go to other men on their going out of employment, is not the levying of an excise but is a capricious confiscation.

2. The imposition is not uniform throughout the United States and is capricious

This imposition is capricious and not uniform throughout the United States whether it be laid to produce general revenues of the Government of the United States or to provide the funds with which to care for the unemployed.

If general revenue is the purpose of the attempted imposition, there is no basis in reason for picking out certain faultless employers to bear the whole burden so as to relieve wealth generally from taxation to furnish the revenue. The time-honored example of a tax on red-headed men only, is no more beyond the bounds of reason than is this attempted imposition.

If the purpose is unemployment benefits, there is no more reason for removing the burden from wealth to the shoulders of possibly propertyless employers who are not the cause of the unemployment.

Even if employers were selected to bear the burden, still, the attempted imposition would be capricious and anti-uniform, because there is no attempt to cover all in the same class.

If this attempted imposition is an excise, the subject matter excised is the state of being of having employees. In order to be uniform throughout the United States, it must cover everyone having that state of being throughout the United States. It is not contended that uniformity of a reasonable excise would be defeated by reasonable exemptions, reasonably selected, or that reasonableness is defeated by the fact that the Court can think of a wiser way of doing it.

In the present imposition, all three elements of reasonableness are lacking.

If unemployed men ought to have a benefit, they ought to have it because of that fact and not because of the type of employment in which they have been

engaged. If employers ought to pay an excise for the state of being of having employees, they ought to pay it when they have that state of being.

The benefit and the burden, are capriciously limited in this attempted imposition.

It is the known fact that the imposition upon non-agricultural labor is equivalent to confining the imposition to certain States to the approximately complete exclusion of other States. It is capricious to deny the benefits to unemployed farm laborers and to relieve their employers from an imposition placed on other employers. Industry and trade do not produce unemployment any sooner than does agriculture.

If the state of being, which is attacked, is not related to the particular benefits to the attacked class, but is for general revenues, that selection among the States is wholly capricious and anti-uniform. Stated in another way: — It is wholly capricious and anti-uniform to cast the general expense of maintaining the government of the United States, upon this state of being of a part only of those who have that state of being, in the particular States. The non-inclusion of the vast territory of agricultural labor and labor performed in groups of seven and under, is both capricious and anti-uniform and bears no relation to the end of acquiring general revenues for the Treasury.

The failure to include employments of seven and under cannot escape the true charge of capriciousness by the plea of administrative reasons. In the very next preceding title, Title VIII sections 801 and 804, these very groups are included down to employers of one employee. These groups, as much as others, require help in times of unemployment and their employers are no worthier of escape from the burden.

The imposition is capricious and anti-uniform in another respect. It is imposed 100% on the described state of being, of those in a State which fails or declines to exercise its sovereign powers to put the burden of its poor relief upon the shoulders of particular employers already in danger of crumbling under the weight of other impositions but whom, nevertheless it is the will of the men in Congress and in the Presidency, that the sovereign State should select as the body, to the exclusion of others, to bear the public burden, in dollars and cents, resulting to the whole community within that State from the tragedy of unemployment within that community; when, at the same time, an imposition of only 10% is made on the same condition of being, in States which subserviently exercise their sovereign powers as dictated by the men in Congress and in the Presidency, irrespective of the disposition or beliefs of legislators within those sovereign States.

Thus far, the matter considered is the text of the attempted statute read in the light of general information. The Court is asked to consider now the particulars surrounding the attempted passage of the Act.

June 28, 1934, the President, by Executive Order No. 6757, created the Committee on Economic Security and provided further for a technical board and staff for the same.

In November, 1934, the President appointed an Advisory Council on Economic Security.

January 15, 1935, the Committee on Economic Security reported to the President.

January 17, 1935, the President transmitted this report with his approval to The Congress in a special message urging prompt action.

This report covers fifty pages dealing with the gravity of the problems of economic want and insecurity. It recommends a general outline for legislation by The Congress and by the States, broad enough to include what later entered into the so-called Social Security Act. Nowhere does it contain any suggestion that the proposed Federal tax shall be to provide unemployment benefits or revenue for the general purposes of the Treasury of the United States. The tax proposed is as a measure to penalize any State that fails or declines to enact legislation to require compulsory contributions for unemployment benefits. The penalty is to be sufficiently large to offset the burden on complying States, but the non-complying States are not to get benefits in return for the tax which they pay.

March 15, 1935, the Committee on Labor of the House submitted a report (No. 418) to accompany the Lundeen Bill (H. R. 2827) to provide among other things for unemployment insurance by the United States by taxes by the United States on higher incomes. The Report says: — " . . . Technicians and scientists agree that the productive capacity of the United States is equal to a far greater measure of security and to far higher standards of living than have yet been established; and science and invention promise to expand this productivity to a higher level if the productive system can be freed from the recurrent burden of industrial depression. [Para.] (5) This, however, cannot be achieved merely by rearranging workers' earnings by taxing pay rolls for reserves for future unemployment. The first step is compensation for insecurity by taxing higher incomes, not pay rolls."

January 17, 1935, Senator Wagner presented to the Senate [S. 1130] and Representatives Doughton and Lewis presented to the House [H. R. 4120] bills incorporating the President's recommendations. These

were immediately referred to the Senate Committee on Finance and the House Committee on Ways and Means, respectively.

Committee hearings were held on these bills.

April 4, 1935, Representative Doughton introduced a bill [H. R. 7260] which on that day was referred to the Ways and Means Committee.

The next day, the Committee reported [House Report 615, 74th Congress, 1st Session, April 5, 1935] the bill which the Congressmen later purported to pass.

April 11, 1935, the House resolved into Committee of the Whole House on the State of the Nation, for consideration of the bill.

April 17, 1935, the members of the House purported to pass the bill.

In May, 1935, the Senate Committee on Finance considered the bill and reported favorably with amendments [Senate Report No. 628, 74th Congress, 1st Session, 1935].

June 19, 1935, the Senate purported to pass the bill with the amendments which had been reported by its Committee.

The matter went to Conference, and was reported back by the Conference Committee.

August 8, 1935, the members of the House purported to pass the Act.

August 9, 1935, the Senators did the same.

August 14, 1935, the President approved, as Public Act No. 271 of August 14, 1935, 74th Congress, 1st Session, 1935.

The Report No. 615 submitted April 5, 1935 by the Committee on Ways and Means, which recommended the enactment of the particular law in the terms of the so-called Social Security Act, contains a number of significant statements as to its purpose and expected effect.

The Report contains no suggestion that the Act is designed to raise general revenue. It is directed throughout to a consideration of the needs of relieving against distress due to the various conditions covered by the various Titles.

> "Thus far in the depression, we have merely attempted to relieve existing distress, but the time has come for a more comprehensive and constructive attack on insecurity. The foundations of such a program are laid in the present bill."
>
> "Work for the employables on relief is contemplated in the work-relief bill; a second vital part of the program for security is presented in this bill. The bill is designed to aid the States in taking care of the dependent members of their population, and to make a beginning in the development of measures which will reduce dependency in the future. It deals with four major subjects: Old-age security, unemployment compensation, security for children, and public health. These subjects are all closely related, all being concerned with major causes of dependency. Together they constitute an important step in a well-rounded, unified, long-range program for social security." . . . .
>
> "Unemployment is an even more prevalent cause of dependency than old age; in fact, it is the most serious of all hazards confronting industrial workers. . .
>
> " . . . It should be clearly understood that State unemployment compensation plans made possible by this bill cannot take care of the present problem of unemployment. They will be designed rather to afford security against the large bulk of unemployment in the future." . . .

" . . . To provide something better than relief on a needs basis for the unemployed of the future, the establishment by the States of unemployment compensation systems is urgently to be desired. Titles III and IX seek to encourage States to set up such systems and to keep them from being handicapped if they do so." . . .

" . . . Unemployment compensation is greatly preferable to relief because it is given without any means test. It is in many respects comparable to workmen's compensation, except that it is designed to meet a different and greater hazard." . . .

" . . . In this country it has been endorsed by numerous Federal and State commissions and committees, but prior to this year only one State enacted such a law, and this came into operation less than a year ago.

"The failure of the States to enact unemployment insurance laws is due largely to the fact that to do so would handicap their industries in competition with the industries of other States. The States have been unwilling to place this extra financial burden upon their industries. A uniform, Nation-wide tax upon industry, thus removing this principal obstacle in the way of unemployment insurance, is necessary before the States can go ahead. Such a tax should make it possible for the States to enact this socially desirable legislation." . . .

(This is equivalent to saying that the Nation may tax the States which do not want this system of relief and not that these States ought to be taxed to provide general revenues for the United States. It is evident also that the respective legislatures of the States including that of Massachusetts do not deem it in the interest of the State to have such an act, if other

states are not to be forced to enact similar legislation burdening their industries correspondingly.)

"Yet the Federal Government, under this bill, has important functions to perform in order to make it possible for the States to have unemployment insurance laws and to facilitate their operation. It equalizes competitive conditions through the imposition of the employment excise tax provided for in title IX . . . "

(At another time it had been thought that States should be forced by a so-called Federal Tax to prohibit child labor in order to equalize competitive conditions in States which prohibited child labor.)

" . . . In title III financial aid is given the States by the Federal Government to defray their costs in administering unemployment insurance. Finally, the Federal Government is to handle all unemployment reserve funds, in a trust account in the United States Treasury for the benefit of the States to which they belong " . . .

" . . . the provision that all reserve funds are to be held by the United States Treasury, to be invested and liquidated by the Secretary of the Treasury in a manner calculated to promote business stability . . . "

The schedules attached to this Report read in conjunction with the Senate Report, give these estimates:—

Total number of gainful workers	48,830,000
Total number of owners, operators, self-employed (including the professions)	12,087,000
Total number of workers excluded because of occupation (farm labor, domestics, teachers, and governmental and institutional workers)	9,389,000
Estimated number of workers attached to establishments with less than eight employees	4,200,000

Estimated number of workers attached to establishments of eight or more employees (including unemployed) April 1930	23,154,000
	48,830,000

The figures for the establishments with under eight employees is arrived at in this manner: — The Report from which quotations are being made places the figure for establishments with nine or less at 5,400,000. The Senate Report places the estimated number of workers attached to establishments with three or less, at 2,600,000. The figures just given in this brief are reached on the assumption that if in the different establishments employing from one to nine there are 5,400,000, it is accurate enough for present purposes to assume nine gradations. This would mean, employed in groups of nine, 600,000; employed in groups of eight, 600,000; a total of 1,200,000, which, deducted from the Committee's estimate of 5,400,000, leaves the 4,200,000.

The gainful workers are divided, then, into —

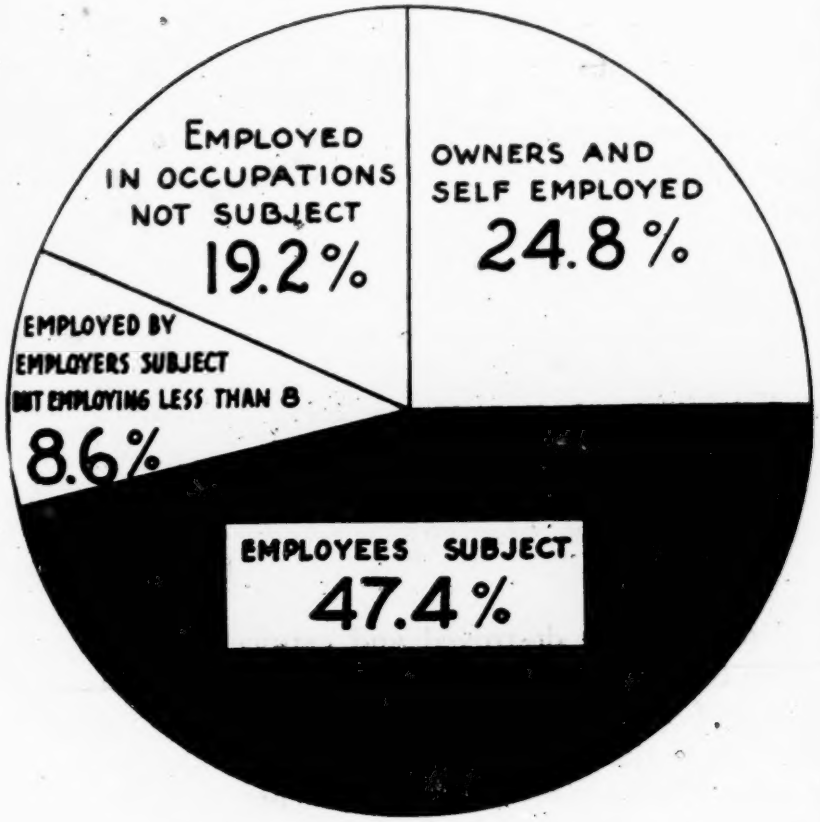
Owners, operators and self-employed	24.8%
Employees in occupations not subjected	19.2%
Employees in taxed employments not subjected because of exemption	8.6%
Employees in employments subjected — including unemployed	47.4%
	100. %

It will be noted from this that of the gainful workers of the country, less than half are in employment subjected to this imposition.

Even this figure is too large, because, as the Committee Report says: — "

> " . . . The actual number of employees covered by the tax would be considerably smaller . . . due to unemployment."

The relative percentages are shown on the accompanying graph.



The Biennial Census of Manufactures of the United States, Dept. of Commerce, Bureau of the Census, for 1933, Interim Release of May 1, 1935, shows that the number of industrial establishments in the United States employing wage earners was 137,251, employing an average of wage earners for the year of 6,055,736. These establishments are classified in classes of wage earners 1 to 5, 6 to 20, and above 20. If it be assumed that the establishments employing 6 to 7 wage earners are 2/15 of the establishments employing 6 to 20 wage earners, the establishments employing 1 to 7 wage earners are 62,508; and the establishments employing 8 and above are 74,743. This means that of the industrial establishments the burden is placed upon 54 per cent and that 46 per cent bear none of it.

	Number	*Per Cent*
Establishments employing 1 to 7..	62,508	46
Establishments employing 8 and more.....	74,743	54
	137,251	100

Uniformity is destroyed and caprice is established when it is shown that the imposition is on the state of being of having employees and yet half the gainful workers in the forty-eight States are excluded from the supposed benefits of unemployment insurance and their employers are not subjected to the imposition. This is not a reasonable exemption. It is a capricious selection from among those in like position. The excepted workers need the social security of unemployment insurance just as much as those who get it. Statistics indicate that farm and domestic laborers and servants have been thrown out of employment onto the relief rolls and into the C. C. C. in vast numbers.

The Census of Unemployment in Massachusetts as of January 2, 1934 Labor Bulletin No. 171, Public Document No. 15 of 1935, shows that the percentage of unemployment in rural areas (28.9) is larger than that for the State as a whole (24.9).

In addition to this, it appears from Works Progress Administration Research Bulletin, Series 1, No. 16, that in May, 1935, that from those ages 16 to 24 with former occupations there were 372,200 agricultural workers on relief.

It is probable that employees in groups of seven and under have suffered fully as much as those in groups of eight and over.

The employees of the forty-seven percent bear not only the burden of caring by so much for the unemployed among the forty-seven percent, but also the burden of their share of taxes to meet the public expense for poor relief and assistance of the remaining fifty-three percent and of the unprovided balance of the forty-seven percent. Crudely repeated, the employers of the forty-seven percent pay one hundred percent of the unemployment benefits for the forty-seven percent and also forty-seven percent of one hundred percent of the poor relief and assistance. These are average approximations, subject to wide variations in individual cases. They are sufficiently accurate to show the capriciousness of the imposition on the forty-seven percent.

The United States Census Report for 1930, giving the figures for the year 1929, show the following figures: —

	Industry	*Trade Wholesale and Retail*
Establishments . .	210,959	1,712,860
Wages	$11,620,973,000	$8,199,800,000

This vast wage earning in Trade is largely in establishments employing under 8 persons — that is, from 1 to 7.

The same census shows that of the 1,712,860 establishments, 169,702 are in wholesale trade employing an average of nine and four-tenths persons and that 1.543,158 are in retail trade employing an average of two and nine-tenths persons. From this it is apparent that considerably more than ninety percent of the establishments employ less than eight persons.

To anticipate the Senate Committee's report about to be given, stating that the tax of 1% on payroll amounts to only about one-third of one percent on sales, this has reference to the 3% tax. It does not take into account the 6% tax designed for old-age compensation. The Committee's figures would be equally applicable and make the two taxes amounting to 9% equivalent to a general sales tax of 3%.

As the tax is on trade as well as on industry, it is, except in the case of imported merchandise sold, taxed twice.

The same census report shows the value or sale of

Industrial products.....	$70,434,863,000
Wholesale Trade.....	69,291,548,000
Retail Trade.....	49,114,653,000

Those products of domestic industry in this way pay two taxes, inevitably; and those which pass through both wholesale and retail trade, three taxes; and those which pass from the wholesale trade into the hands of manufacturers as the raw materials of those manufacturers, pay the tax again.

When the 9% goes into effect, then, we have it in both comminuted and compound form, beyond the possibilities of accurate mathematical statement.

These compoundings are measurably avoidable in a general retail sales tax not falling upon goods in the

earlier operations of wholesale trade and manufacture. To some extent they are avoidable in a general manufacturer's tax. They cannot be avoided in a payroll tax.

On the question whether this huge tax — estimated in the same Committee Report for the year 1951 at $2,724,000,000, and in excess of two billion dollars for every year after 1943, can all be passed on to the consumer, let him who claims the vision of an inspired prophet give the answer. It is the known fact to anyone familiar either with industry or with commerce, that in many cases the levy cannot be passed on without the destruction of the trade. If it cannot be passed on, the employer inevitably meets financial destruction when subjected to such a huge tax.

In Massachusetts, the apparently unprinted Special Report after a special study made by the Bureau of Labor Statistics early in 1935 for the Commission on Unemployment Insurance and furnished to it, gives classifications of manufacturing establishments employing wage-earners by the number of wage-earners employed. This gives:

Employers of 1 to 7	3,807
Employers of 8 and over	4,251
	8,058

It is apparent from this that in one State, in manufacturing, alone, 47.2% of the employers are not subjected to the imposition; and that 52.8% must carry the burden in the competition.

The above Report of the Senate Committee, No. 628, follows the general course of the above described Report of the Committee of the House. Certain differences are to be noted. The Report says: —

> "A considerable part of the population, however, is outside of title II. Included in this

excluded group are all agricultural workers, domestic servants, employees of charitable, educational, and religious organizations, all self-employed persons, farmers, professional people, and proprietors and entrepreneurs. These groups include almost half of all persons 'gainfully occupied' as this term is used in the United States Census. Many of these people will not be so greatly in need of old-age assistance as the industrial workers to whom title II is applicable, but large numbers are likely to be dependent . . . "

" . . . Of all urban families on relief more than 90 percent have become dependent upon the public for support because the breadwinner or all breadwinners in the family are without work." . . .

" . . . Unemployment compensation differs from relief in that payments are made as a matter of right, not on a needs basis, but only while the worker is involuntarily unemployed." . . .

"Such unemployment compensation is not a complete safeguard against the hazard of unemployment. In periods of prolonged depression many workmen will exhaust their compensation benefits before they find other employment. This will hold true of some workmen even in periods of prosperity. Supplemental to unemployment compensation there will still be need for work relief for those whose compensation rights have been exhausted, as well as for workers who are outside of the compensation system." . . .

"This bill does not set up a Federal unemployment compensation system. What it seeks to do is merely to make it possible for the States to establish unemployment compensation systems and to stimulate them to do so. This objective is carried out through grants-in-aid to the States (in title III)

for the administration of unemployment compensation laws and through the imposition of a uniform pay-roll tax on employers (in title IX) against which a credit is allowed for contributions made by them to unemployment compensation funds set up pursuant to State law." . . .

" . . . These conditions do not prescribe what sort of unemployment compensation laws the States shall enact; they are intended merely to make certain that the States actually have unemployment compensation laws, rather than mere relief measures. . . . "

" . . . With a uniform tax and this offset device, employers in all States will be put in an equal competitive position. No State can gain any advantage through failing to establish an unemployment compensation system. This provision will equalize competitive conditions and thus enable States to enact unemployment compensation laws without handicapping their industries."

. . .

" . . . However, large groups of workers (agricultural workers, employees in small establishments, etc.) embracing approximately one-half of all gainful workers will not be brought under unemployment compensation. This means that, on the average, a 1-percent contribution rate for unemployment compensation purposes will increase costs to the consumers by only about one-third of 1 percent. Such small increased costs may well be offset by reductions in costs brought about through regularizing employment and maintaining the purchasing power of unemployed workers."

It is evident that the object was not to impose a tax for revenue and then to grant an exemption to avoid

double taxation. It was to impose a tax, not for revenue, upon recalcitrant States which would get no benefit whatever from the tax and the employees in which would be eligible for no benefits from the tax. The men in Congress seem to have thought that they would be justified in imposing this coercion upon those States that would not bend to their will, because these men were so deeply convinced of the beneficent character of the system which they proposed that they thought that it ought to be imposed on sovereign States whether the States will it, or not.

The criticism of the action of these men in Congress does not impugn the loftiness of their aspirations. Their very earnestness in pursuit of what they believed a good cause, has brought an obliquity of vision as to the rights of the several States under the Constitution to decide these matters of policy of government for themselves.

The beneficence or not of unemployment insurance is not involved in this case.

A State should not be penalized by the Nation because it chooses to govern itself within its own domain, and outside the category of government set by the Constitution for the Nation.

However lofty the motives, an attempt by the men in Congress to impose such a penalty on a State for governing itself in its own way, is a capricious imposition and not a tax uniform throughout the United States.

As soon as it became apparent, April 17, 1935, that the men in Congress were going to pass this Act, already recommended by the President, no State was any longer able to exercise an independent judgment on the policy of compelling employers to contribute unwillingly to unemployment compensation. The enactment of the State laws, however worded, is not an

indication of a judgment of the legislature that such a policy is for the public good. It is an indication only of an opinion that it is for the public good to avoid the penalty imposed by the Social Security Act on recalcitrant States.

The Social Security Act so-called, is superlative example of anti-uniformity and caprice.

If from the language and the context, the purpose for which the imposition is laid can be ascertained, the Court is not required to remain blind thereto.

Grosjean v. *American Press Co.*, 297 U. S. 233.
Trusler v. *Crooks*, 269 U. S. 475.
United States v. *Butler*, 297 U. S. 1.

Ordinarily, an imposition described by The Congress as a tax, is payable into the Treasury of the United States. This does not establish that it is a revenue measure.

The title of an Act and its whole content may be inspected to see that The Congress intended the imposition to be for a particular purpose and not merely to produce general revenue for the United States.

Hill v. *Wallace*, 259 U. S. 44.
Child Labor Tax Case, 259 U. S. 20.
Carter v. *Carter Coal Co.*, 298 U. S. 238 (semble).
United States v. *Constantine*, 296 U. S. 287, 294, (semble).

The mere fact that property excised is not equally distributed throughout the United States does not make the tax anti-uniform.

Knowlton v. *Moore*, 178 U. S. 41.
Head Money Cases, 112 U. S. 580, 594.

Nor does the fact that other kinds of property are not taxed, at the same rate or at all if the selection is reasonable and not capricious.

Brushaber v. *Union Pacific R. R. Co.*, 240 U. S. 1.
Van Oster v. *Kansas*, 272 U. S. 465.

An excise otherwise reasonably imposed to provide revenue for the general welfare of the Government of the United States may still be uniform even if reasonable exemptions are reasonably made.

Jeffrey Mfg. Co. v. *Blagg*, 235 U. S. 571.
N. Y. Central R. R. Co. v. *White*, 243 U. S. 188. (semble).
Florida v. *Mellon*, 273 U. S. 12.

A capricious selection of class of property, class of persons, or rate gradation is indicated by repeated language of the Supreme Court of the United States to make an attempted excise into an anti-uniform confiscation, without tax character.

Grosjean v. *American Press Co., Inc.*, 297 U. S. 233, 251.
Colgate v. *Harvey*, 296 U. S. 404, 422, 424.
Concordia Fire Ins. Co. v. *Illinois*, 292 U. S. 535.
Stebbins v. *Riley*, 268 U. S. 137.
Louisville Gas & Elec. Co. v. *Coleman*, 277 U. S. 32.
Schlesinger v. *Wisconsin*, 270 U. S. 230.
Bromley v. *McCaugn*, 280 U. S. 124, 139.
Mayflower Farms, Inc. v. *Ten Eyck*, 297 U. S. 266, 272, *semble of a regulation.*
In re Opinion of The Justices, 85 N. H. 562; 154 Atl. 217 (semble).

3. The imposition is not to pay the debts and provide for the common defense and general welfare of the United States

It is obvious that this imposition is not to pay the debts of the United States or to provide for the common defence of the United States. It is submitted that it is not to provide for the general welfare of the United States.

An imposition to provide unemployment benefits regardless of need, to persons who have worked in local employments in local trade and manufacturing within a State, not related to interstate or foreign commerce, or in any calling related to the matters subject to be governed by The Congress, is not to provide for the general welfare of the Government of the United States.

No question is presented in this case as to the beneficence or wisdom of unemployment benefits to the needy or to the wealthy.

Ignoring payment of debts of the Government of the United States and providing for the common defence of the Government of the United States, no tax by The Congress is authorized unless it is to provide for the general welfare of the Government of the United States. The men in Congress who chose the Title for Chapter 531, said that it was "An Act to provide for the general welfare by establishing a system . . . " This selection of title suggests their avenue of approach; but this choice does not make the payment of such unemployment benefits a part of the general welfare of the Government of the United States.

The limits upon the taxing power are not set by "welfare", only. They are set by the limits upon the kind of welfare for which the tax may be levied. It must be the limited kind of welfare which is "general" and it must be the limited kind of welfare which is "of

the United States." In this limitation, "of the United States" evidently is used in the sense of Government of the United States. The phrase would not be changed in meaning if put in the form "for the General Government and not for the State Governments".

In the Constitution, Article I, Section 8, it is obvious that "of the United States" qualifies not only "general welfare but also "common defence" and "debts". The qualification is used in the same sense in the three applications. "Debts" of the United States do not mean debts of the territory or of the people within the territory. They are the debts of the Government of the United States, either incurred or assumed. Equally, it is the general welfare of the Government of the United States that is described as the purpose to provide revenue for which The Congress may tax.

If it had been intended that The Congress should have power to legislate for the general welfare of the territory of the thirteen States, the Constitution would have said so. There does not appear in any clause of the Constitution, nor in the sum total of it, a grant of power to legislate for the general welfare of those residing in the territory of the several states separately or added together. There could not be a grant of such power in a constitution designed to preserve the existing complete sovereignty of the several States in all matters which related to the welfare of the people of those respective States, where the State could legislate concerning that welfare without interfering with the external relations of the group of States or the mutual relations between the States.

It is not to be supposed that a constitution would grant to The Congress of the United States a power to tax to provide revenue for the general welfare of the territory of the United States when that Congress had been given no power to legislate for the general welfare of that territory.

The acquiring, the holding, or the disposing of territory outside the confines of the particular States was an external matter and by the Constitution was made a part of the "general welfare of the United States". Such territory could be obtained by treaty or by war—sovereign powers expressly granted to the United States. The particular powers granted, all relate to foreign relations or to mutual relations, and none to the governing of the composite of the thirteen territories.

If it were not for the phrase, "general welfare of the United States" the Constitution would contain no grant of any power to tax except to pay the debts and provide for the common defence. It is only in this third classification of objects — "general welfare of the United States" — that there is found any power to tax for the purpose of running the government of the United States including therein all those things other than payment of debts and providing for common defence which the United States may do.

In determining the meaning of this phrase, "general welfare of the United States", it is respectfully urged upon the Court that what is to be looked for is the meaning of that phrase in 1788 to the ordinary people of the thirteen States which joined in making the contract tendered to them, respectively, for adoption. It makes no difference what any of the draftsmen or proponents thought that it meant, if that differs from the common understanding of it which the three million ordinary men and women of the times should have had when they were deciding whether or not to adopt it.

The Articles of Confederation which were the forerunner of the Constitution, made among the same thirteen sovereign States that made the Constitution, contained the phrase, "welfare". These Articles start off with the agreement that "Each State retains its sovereignty, freedom, and independence, and every

power, jurisdiction, and right which is not by this confederation expressly delegated to the United States in Congress assembled". By Article III they entered into a "firm league of friendship with each other for their common defense, the security of their liberties and their mutual and general welfare, binding themselves to assist each other against all force offered to or attacks made upon them or any of them on account of religion, sovereignty, trade, or any other pretense whatever." Anyone knows without argument that this gave no power to the Confederation to govern the territory of the thirteen sovereigns for the welfare of the citizens of those States. The welfare which the Confederation was to care for, was the welfare in external relations — general, as distinct from local or internal, and mutual, in the relations between the sovereigns.

When the words "General Welfare", came into the Constitution from the same States which had used them in the Articles of Confederation, they meant the same thing. The external relations — such as war, defensive or aggressive; acquisition of external territory by treaty; foreign commerce, naturalization — were made clear. The mutual relations — such as interstate commerce; postal communication, bankruptcy which would affect debts and credits of men in different States, patent rights, money, were made clear. These foreign relations and mutual relations, with such implications as arise from them, comprehend all that was put into the hands of the Government of the United States. The governing in those matters was what constituted the general welfare of that government. It was for that government that the power to tax was given. All the specifically described powers, and all the generally indicated powers, of the Government of the United States fall into one or another of these two classes, — foreign relations and mutual relations.

The terms "general" and "of the United States" are not terms of extension. They are terms of restriction upon the kind of welfare to provide revenue for which the Congress may levy a tax. They stand opposite to the restrictions of "State" or "local" in defining the welfare for which a State may levy a tax.

The novel feature of the Constitution of the United States was the erecting of two absolute sovereignties over one territory. Thirteen sovereigns erected a new sovereign but retained all the sovereign powers except those transferred to the Nation expressly or by reasonable implication. The thirteen States were the contracting parties who did this by ratifying, in separate Conventions, in the respective States, the Constitution which had been proposed by the draftsmen of the document.

Welfare evidently is served by bringing arid lands into needed cultivation. Nevertheless, the Supreme Court has said: — "While arid lands are to be found, mainly if not only in the Western and newer States, yet the powers of the National Government within the limits of those States are the same (no greater and no less) than those within the limits of the original thirteen, and it would be strange if, in the absence of a definite grant of power, the National Government could enter the territory of the States along the Atlantic and legislate in respect to improving by irrigation or otherwise the lands within their borders. Nor do we understand that hitherto Congress has acted in disregard to this limitation". (*Kansas* v. *Colorado*, 206 U. S. 46, 92).

As far as it may be done by legislation, the control of the relation between employer and employee, the rate of wages, the withholding of wages to build reserves, the insurance against accidents, the making of reserves for the employee when he no longer or not for a time can earn wages, within a State, in labor local to that

State, between residents or operators within the State, and not in the course of interstate commerce, is in the legislature of the State and not elsewhere. The Congress has no more control over it than has the Canadian Dominion Parliament or that of Great Britain. That local relation is not a feature of the welfare of the Government of the United States. If it turns out to be that this feature of the welfare of each State calls for similar or the same control in each other State by the legislature of this other State, these forty-eight States' welfares do not hatch out into the general welfare of the Government of the United States.

Picture, if you will, the consternation of the men of the thirteen sovereign States, engaged in considering whether or not to enter into the compact of the Constitution, if they had been told that they were handing over to the new Nation the control of the way in which the unemployed within a State, needy or wealthy, should be supported, and power to draw from the State of Georgia or South Carolina a part of the money with which to support the indigent, or wealthy, in the State of New York or Massachusetts. The surprise would have been great, to know that The Congress could regulate the employment relation internal in a particular State and provide that an employer must, whether he wished or not, give to an employee, whether he demanded it or not, a minimum wage which must include not only a reasonable wage and a living wage but also an unemployment support. It is self-evident that what the employer must pay in taxes for this benefit he cannot pay in larger wages currently to enable the thrifty employees to provide for their own periods of idleness.

Should the contracting parties, in adopting the Constitution, have understood that they were giving away this power?

The contracting parties, the men of the several States, never conceived that they were giving away this power to a new, distant sovereign. They had no reason to conceive it. They made no such grant. Instead they reserved any such power, if it existed, to the people of their separate sovereign State.

Of course, if The Congress may impose on a non-wealthy few the support of the many temporarily unemployed; whether wealthy or indigent, The Congress may do the same as to the support of all unemployed. If the power exists, The Congress is the one to say where the line shall be drawn. It makes no difference that no one would suppose that The Congress would put the support of the many, needy or wealthy, upon the few wealthy or poor. It is what the men in Congress have attempted in the proposed Act now at bar. The granting of such a vast power, the adopters of the Constitution never conceived of. No such grant was made.

The support of men and women who are unemployed in the respective states or who cannot get employment is no more for the general welfare of the Government of the United States than is the keeping the citizenry of the United States from becoming drug addicts and thereby likely to be unable to earn a living or to fight for the United States or to vote intelligently to choose the President and the Senators and the Representatives in The Congress thereof.

Nevertheless, it seems that the Supreme Court is unanimous that provisions of an anti-narcotic act, not to collect an excise on a dangerous article of commerce,

but primarily to suppress that intrastate trade would not be for the general welfare of the United States in the sense in which those words are used in the Constitution and that they would invade the territory of government of the States.

Linder v. *United States*, 268 U. S. 5, 17.
United States v. *Doremus*, 249 U. S. 86, 95.
United States v. *Jin Fuey Moy*, 241 U. S. 394, 401.

Local commercial activities and employment relations completed wholly within a State, howsoever common they may be in every State, are not a part of the general welfare of the Government of the United States.

Schechter Poultry Corp. v. *United States*, 295 U. S. 495.
United States v. *Butler*, 297 U. S. 1.
Railroad Retirement Board v. *Alton Railroad Co.*, 295 U. S. 330 (*a fortiori*).
Child Labor Tax Case, 259 U. S. 20.
Hill v. *Wallace*, 259 U. S. 44.
Hammer v. *Dagenhart*, 247 U. S. 251.

In the range of interstate commerce, where Congress has authority, "Congress may not use this protective authority as a pretext for the exertion of power to regulate activities and relations within the states which affect interstate commerce only indirectly" (Hughes, C. J., in *Carter* v. *Carter Coal Co.*, 298 U. S. 238, 317).

In the case cited, it would seem to be that, if there were no possible relation to interstate commerce, the Court was unanimous.

Carter v. *Carter Coal Co.*, 298 U. S. 238.

If no relation to interstate commerce or other substance within the regulatory power of The Congress is involved, it seems that the Court is unanimous that an

Act for a compulsory pension system is not within the powers of The Congress.

Railroad Retirement Board v. *Alton Railroad Co.*, 295 U. S. 330, 362, 368, 375, 381.

The court is unanimous that Congress has no power to regulate the financial relation between employers and employees such as unemployment benefits or other wages in a local business unrelated to interstate commerce.

Schechter Poultry Corp. v. *United States*, 295 U. S. 495.

The present attempt is to regulate wages by providing that the employer must, as a part of the wage, furnish a continuation of a portion of the wage during unemployment after the applicant ceases to be in another's employ. The State where this local employment occurs may deem that it would be wiser to regulate the relation in a different way, to provide no or a smaller benefit with no or a smaller compulsory contribution. The same thing cannot be done by The Congress and by the State Legislature. If it is a subject for legislative regulation at all, the Tenth Amendment says that it is to be regulated by the State Legislature and not by The Congress.

The Supreme Court holds by implication that regulations of the relations between employers and employees by impositions on employers to provide a reserve fund for unemployment benefits to persons formerly employed in employments in the State's category whether by these employers or by others, are not within the power of The Congress, because these impositions are within the powers of the State legislature.

W. H. Chamberlin, Inc. v. *Andrews*, (November 23, 1936), 299 U. S. —, 57 S. C. R. —; 271 N. Y. 1, 2 N. E. Rep. (2nd Ser.) 22.

They cannot be in the legislative control of both sovereignties.

Collector v. *Day*, 11 Wall. 113, 124.

The particular limit to "general welfare", as to which Hamilton and President Madison differed and President Monroe vacillated, is not involved. None of them suggested that any such regulations of employment obligations and relations within a State come within this phrase. None of them, it seems, would have supported a power in The Congress to compel employers and employees in purely local employment to contribute to a fund for unemployment benefits.

President Jackson, May 27, 1830, vetoed the Maysville Road Bill on the ground that such an appropriation could not be said to be for "general welfare" and that Congress ought not to expend where it has not jurisdiction (2 Richardson, 483, 492, 639). President Buchanan, February 24, 1859, vetoed the Act for the endowment of a college in every State with the message: — "I presume the general proposition is undeniable that Congress does not possess the power to appropriate money in the Treasury, raised by taxes out of the people of the United States, for the purpose of educating the people of the respective States." (5 Richardson, 547) It seems that his meaning would cover as well — "for the purpose of supporting the unemployed of the respective States". President Cleveland in 1887 vetoed an attempted Act of The Congress to aid Counties in Texas injured by drought. In his message he said: — "I can find no warrant for such an appropriation in the Constitution" (8 Richardson 557). Like an echo of a receding past, now growing inaudible, comes the rest of the message: —

"the lesson should be constantly enforced that though the people support the Government the Government should not support the people." These convictions have particular force held as they were by revered leaders of the party in control of The Congress whose members are responsible for the attempt now before the Court. The limits set by the Constitution are not newly invented now, to defend against newly conceived attempts to invade.

There is no concurrent sovereignty of the Nation and of the separate States. The Nation is the absolute sovereign in its category of government. Each separate State is absolute sovereign in its category of government. The boundary line between the categories takes the place of the boundary line between territories of neighboring sovereigns.

Collector v. *Day*, 11 Wall. 113, 124.

Nothing is "general welfare of the United States" except that which is within the boundary lines of its category. "United States" as used in the Constitution is not a territory. It is a sovereign government. The State government is a sovereign government.

THE COURTS OF THE UNITED STATES ARE AUTHORIZED TO DECIDE ONLY IN ACCORDANCE WITH LAW AND LACK AUTHORITY TO TREAT AS AN ACT OF CONGRESS THAT WHICH IS NOT WITHIN THE POWERS OF THE CONGRESS

Because of a considerable misunderstanding in the mind of the public as to the powers of the Court concerning an attempted Act of The Congress which is not within its powers, the Court is respectfully urged to re-state the law on this subject.

The constituted power of this Court is to decide in accordance with the law as the Court finds it to be. The Court has no authority to treat as an Act of Congress passed within its powers under the Constitution, something which is not such. It is as vicious to hold to be an Act of Congress within its powers under the Constitution that which is not such, as it is to hold invalid an Act of Congress that is within those powers.

In truth, there is no such thing as an unconstitutional Act of The Congress. The Congress has no power to pass an Act which it has no power to pass. The men in Congress who attempt it, are not acting as congressmen within their commissions when they go through the forms for such an enactment. They may distort the records of Congress by making to appear as an Act of Congress that which is not. In action in Congress they represent their constituents, only, when within the terms of the selection by the constituents. That is, to do only those things which the Constitution permits. Such an attempted Act is not an expression by The Congress or by the constituent people, that it is for the public welfare that such an Act be passed. It is at the most an expression of less than six hundred men out of one hundred and twenty-five million.

The boundary set by the Constitution is rigid, and not elastic. However difficult to define its location in a given case, the boundary which the Constitution sets is not doubtful. The Constitution is certain on the subject.

The courts have no authority to bring within that boundary an area of the courts' own doubts. The court may not create or enlarge a no-man's-land of doubt by indulging in presumptions out of courtesy to the men in Congress who may have acted without power under the Constitution. The Court is not disrespectful to The Congress when it observes that The Congress, because powerless, did not pass an Act which a majority of the men in Congress have asserted that it did. The Court is protecting The Congress against attempting usurpers.

This is more emphatically true where the court has to determine whether these men in Congress have attempted to invade the State. The court is the last and most powerful peaceful means to prevent that invasion.

Accordingly, it has been settled over a long period that the courts have no authority to treat as an Act of Congress within the powers of Congress that which is not.

It is reversible error for a court to hold to be an Act of Congress within its powers that which is not.

> *Knickerbocker Ice Co.* v. *Stewart*, 253 U. S. 149, 166.

The correct judgment of a court that an alleged Act of Congress is not one within its powers, requires that the judgment be affirmed.

> *State of Washington* v. *W. C. Dawson & Co.*, 264 U. S. 219, 228.
> *Coyle* v. *Smith*, 221 U. S. 559, 580.

The court of last resort of Massachusetts as early as 1817 adjudged an Act of Congress not to be warranted by the Constitution of the United States.

Wetherbee v. *Johnson*, 14 Mass. 412.

This, and a similar decision in New York (*Patrie* v. *Murray*, 43 Barbour, 321) have been repeatedly cited with approval by the Supreme Court of the United States.

Capital Traction Co. v. *Hof*, 174 U. S. 1, 11.
The Justices v. *Murray*, 9 Wallace, 274, 282.

Such a judgment by the courts of Kentucky, has been affirmed.

Hepburn v. *Griswold*, 8 Wallace, 603, 626.

These principles apply to the District Courts and to the Courts of Appeal of the United States. They are not permitted to decide contrary to law even if the books of Congress say that there is an Act of Congress directing the courts to do so when in fact there is no such Act because The Congress had no power to pass it.

CONCLUSION

For these several reasons, the plaintiff is entitled to have entered a final decree adjudging that Section 901 of Title IX of Chapter 531 of August 14, 1935 (49 Stat. 620), commonly called the Social Security Act, is not an Act of The Congress within its powers under the Constitution of the United States, and that the defendant be enjoined until the further order of this Court from making the payments defined in that section.

Respectfully submitted,

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F. P. 6-12

SUPREME COURT OF THE UNITED STATES.

No. 837.—October Term, 1936.

Chas. C. Steward Machine Company, Petitioner, *vs.* Harwell G. Davis, Individually and as Collector of Internal Revenue for the District of Alabama, Respondent.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

[May 24, 1937.]

Mr. Justice Cardozo delivered the opinion of the Court.

The validity of the tax imposed by the Social Security Act on employers of eight or more is here to be determined.

Petitioner, an Alabama corporation, paid a tax in accordance with the statute, filed a claim for refund with the Commissioner of Internal Revenue, and sued to recover the payment ($46.14), asserting a conflict between the statute and the Constitution of the United States. Upon demurrer the District Court gave judgment for the defendant dismissing the complaint, and the Circuit Court of Appeals for the Fifth Circuit affirmed. — F. (2d) —. The decision is in accord with judgments of the Supreme Judicial Court of Massachusetts (*Howes Brothers Co.* v. *Massachusetts Unemployment Compensation Commission*, December 30, 1936, 5 N. E. (2d) 720), the Supreme Court of California (*Gillum* v. *Johnson*, November 25, 1936, 62 Pac. (2d) 1037), and the Supreme Court of Alabama (*Beeland Wholesale Co.* v. *Kaufman*, March 17, 1937, — Ala. —). It is in conflict with a judgment of the Circuit Court of Appeals for the First Circuit, from which one judge dissented. *Davis* v. *Boston & Maine R. R. Co.*, April 14, 1937, — F. (2d) —. An important question of constitutional law being involved, we granted certiorari.

The Social Security Act (Act of August 14, 1935, c. 531, 49 Stat. 620, 42 U. S. C., c. 7 (Supp.)) is divided into eleven separate titles, of which only Titles IX and III are so related to this case as to stand in need of summary.

The caption of Title IX is "Tax on Employers of Eight or More." Every employer (with stated exceptions) is to pay for each calendar year "an excise tax, with respect to having individuals in his employ", the tax to be measured by prescribed percentages of the total wages payable by the employer during the calendar year with respect to such employment. Section 901. One is not, however, an "employer" within the meaning of the act unless he employs eight persons or more. Section 907(a). There are also other limitations of minor importance. The term "employment" too has its special definition, excluding agricultural labor, domestic service in a private home and some other smaller classes. Section 907 (c). The tax begins with the year 1936, and is payable for the first time on January 31, 1937. During the calendar year 1936 the rate is to be one per cent, during 1937 two per cent, and three per cent thereafter. The proceeds, when collected, go into the Treasury of the United States like internal-revenue collections generally. Section 905(a). They are not earmarked in any way. In certain circumstances, however, credits are allowable. Section 902. If the taxpayer has made contributions to an unemployment fund under a state law, he may credit such contributions against the federal tax, provided, however, that the total credit allowed to any taxpayer shall not exceed 90 per centum of the tax against which it is credited, and provided also that the state law shall have been certified to the Secretary of the Treasury by the Social Security Board as satisfying certain minimum criteria. Section 902. The provisions of Section 903 defining those criteria are stated in the margin.[1] Some of the conditions thus attached to the allowance of a

[1]Sec. 903. (a) The Social Security Board shall approve any State law submitted to it, within thirty days of such submission, which it finds provides that—

(1) All compensation is to be paid through public employment offices in the State or such other agencies as the Board may approve;

(2) No compensation shall be payable with respect to any day of unemployment occurring within two years after the first day of the first period with respect to which contributions are required;

(3) All money received in the unemployment fund shall immediately upon such receipt be paid over to the Secretary of the Treasury to the credit of the Unemployment Trust Fund established by Section 904;

(4) All money withdrawn from the Unemployment Trust Fund by the State agency shall be used solely in the payment of compensation, exclusive of expenses of administration;

(5) Compensation shall not be denied in such State to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (A) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; (B) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those pre-

credit are designed to give assurance that the state unemployment compensation law shall be one in substance as well as name. Others are designed to give assurance that the contributions shall be protected against loss after payment to the state. To this last end there are provisions that before a state law shall have the approval of the Board it must direct that the contributions to the state fund be paid over immediately to the Secretary of the Treasury to the credit of the "Unemployment Trust Fund." Section 904 establishing this fund is quoted below.[2] For the moment it is enough to say that the Fund is to be held by the Secretary of the Treasury,

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vailing for similar work in the locality; (C) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization;

(6) All the rights, privileges, or immunities conferred by such law or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal such law at any time.

The Board shall, upon approving such law, notify the Governor of the State of its approval.

(b) On December 31 in each taxable year the Board shall certify to the Secretary of the Treasury each State whose law it has previously approved, except that it shall not certify any State which, after reasonable notice and opportunity for hearing to the State agency, the Board finds has changed its law so that it no longer contains the provisions specified in subsection (a) or has with respect to such taxable year failed to comply substantially with any such provision.

(c) If, at any time during the taxable year, the Board has reason to believe that a State whose law it has previously approved, may not be certified under subsection (b), it shall promptly so notify the Governor of such State.

[2] Sec. 904. (a) There is hereby established in the Treasury of the United States a trust fund to be known as the "Unemployment Trust Fund", hereinafter in this title called the "Fund". The Secretary of the Treasury is authorized and directed to receive and hold in the Fund all moneys deposited therein by a State agency from a State unemployment fund. Such deposit may be made directly with the Secretary of the Treasury or with any Federal reserve bank or member bank of the Federal Reserve System designated by him for such purpose.

(b) It shall be the duty of the Secretary of the Treasury to invest such portion of the Fund as is not, in his judgment, required to meet current withdrawals. Such investment may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at par, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under the Second Liberty Bond Act, as amended, are hereby extended to authorize the issuance at par of special obligations exclusively to the Fund. Such special obligations shall bear interest at a rate equal to the average rate of interest, computed as of the end of the calendar month next preceding the date of such issue, borne by all interest-bearing obligations of the United States then forming part of the public debt; except that where such average rate is not a multiple or one-eighth of 1 per centum, the rate of interest of such special obligations shall be the multiple of one-eighth of 1 per centum next lower than such average rate. Obligations other than such special obligations may be acquired for the Fund only on such terms as to provide an investment

who is to invest in government securities any portion not required in his judgment to meet current withdrawals. He is authorized and directed to pay out of the Fund to any competent state agency such sums as it may duly requisition from the amount standing to its credit. Section 904 (f).

Title III, which is also challenged as invalid, has the caption "Grants to States for Unemployment Compensation Administration." Under this title, certain sums of money are "authorized to be appropriated" for the purpose of assisting the states in the administration of their unemployment compensation laws, the maximum for the fiscal year ending June 30, 1936 to be $4,000,000, and $49,000,000 for each fiscal year thereafter. Section 301. No present appropriation is made to the extent of a single dollar. All that the title does is to authorize future appropriations. Actually only $2,250,000 of the $4,000,000 authorized was appropriated for 1936 (Act of Feb. 11, 1936, c. 49, 49 Stat. 1109, 1113) and only $29,000,000 of the $49,000,000 authorized for the following year. Act of June 22, 1936, c. 689, 49 Stat. 1597, 1605. The appropriations when made were not specifically out of the proceeds of the employment tax, but out of any moneys in the Treasury. Other sections of the title prescribe the method by which the payments are to be made to the state (Section 302) and also certain conditions to be established to the satisfaction of the Social Security Board before certifying the propriety of a payment to the Secretary of the Treasury. Section 303. They are designed to give assurance to the Federal Government that the moneys granted by it will not be expended for purposes alien to the grant, and will be used in the administration of genuine unemployment compensation laws.

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yield not less than the yield which would be required in the case of special obligations if issued to the Fund upon the date of such acquisition.

(c) Any obligations acquired by the Fund (except special obligations issued exclusively to the Fund) may be sold at the market price, and such special obligations may be redeemed at par plus accrued interest.

(d) The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to and form a part of the Fund.

(e) The Fund shall be invested as a single fund, but the Secretary of the Treasury shall maintain a separate book account for each State agency and shall credit quarterly on March 31, June 30, September 30, and December 31, of each year, to each account, on the basis of the average daily balance of such account, a proportionate part of the earnings of the Fund for the quarter ending on such date.

(f) The Secretary of the Treasury is authorized and directed to pay out of the Fund to any State agency such amount as it may duly requisition, not exceeding the amount standing to the account of such State agency at the time of such payment.

The assault on the statute proceeds on an extended front. Its assailants take the ground that the tax is not an excise; that it is not uniform throughout the United States as excises are required to be; that its exceptions are so many and arbitrary as to violate the Fifth Amendment; that its purpose was not revenue, but an unlawful invasion of the reserved powers of the states; and that the states in submitting to it have yielded to coercion and have abandoned governmental functions which they are not permitted to surrender.

The objections will be considered seriatim with such further explanation as may be necessary to make their meaning clear.

First: The tax, which is described in the statute as an excise, is laid with uniformity throughout the United States as a duty, an impost or an excise upon the relation of employment.

1. We are told that the relation of employment is one so essential to the pursuit of happiness that it may not be burdened with a tax. Appeal is made to history. From the precedents of colonial days we are supplied with illustrations of excises common in the colonies. They are said to have been bound up with the enjoyment of particular commodities. Appeal is also made to principle or the analysis of concepts. An excise, we are told, imports a tax upon a privilege; employment, it is said, is a right, not a privilege, from which it follows that employment is not subject to an excise. Neither the one appeal nor the other leads to the desired goal.

As to the argument from history: Doubtless there were many excises in colonial days and later that were associated, more or less intimately, with the enjoyment or the use of property. This would not prove, even if no others were then known, that the forms then accepted were not subject to enlargement. Cf. *Pensacola Telephone Co.* v. *Western Union Telegraph Co.*, 96 U. S. 1, 9; *In re Debs*, 158 U. S. 564, 591; *South Carolina* v. *United States*, 199 U. S. 437, 448, 449. But in truth other excises *were* known, and known since early times. Thus in 1695 (6 & 7 Wm. III, c. 6), Parliament passed an act which granted "to His Majesty certain Rates and Duties upon Marriage, Births and Burials", all for the purpose of "carrying on the War against France with Vigour." See *Opinion of the Justices*, 196 Mass. 602, 609. No commodity was affected there. The industry of counsel has supplied us with an apter illustration where the tax was not different in substance from the one now

challenged as invalid. In 1777, before our Constitutional Convention, Parliament laid upon employers an annual "duty" of 21 shillings for "every male Servant" employed in stated forms of work.[3] Revenue Act of 1777, 17 George III, c. 39.[4] The point is made as a distinction that a tax upon the use of male servants was thought of as a tax upon a luxury. *Davis* v. *Boston & Maine R. R. Co.*, supra. It did not touch employments in husbandry or business. This is to throw over the argument that historically an excise is a tax upon the enjoyment of commodities. But the attempted distinction, whatever may be thought of its validity, is inapplicable to a statute of Virginia passed in 1780. There a tax of three pounds, six shillings and eight pence was to be paid for every male tithable above the age of twenty-one years (with stated exceptions), and a like tax for "every white servant whatsoever, except apprentices under the age of twenty one years." 10 Hening's Statutes of Virginia, p. 244. Our colonial forbears knew more about ways of taxing than some of their descendants seem to be willing to concede.[5]

The historical prop failing, the prop or fancied prop of principle remains. We learn that employment for lawful gain is a "natural" or "inherent" or "inalienable" right, and not a "privilege" at all. But natural rights, so called, are as much subject to taxation as rights of less importance.[6] An excise is not limited to

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[3] The list of services is comprehensive. It included: "Maitre d'Hotel, House-steward, Master of the Horse, Groom of the Chamber, Valet de Chambre, Butler, Under-butler, Clerk of the Kitchen, Confectioner, Cook, House-porter, Footman, Running-footman, Coachman, Groom, Postillion, Stable-boy, and the respective Helpers in the Stables of such Coachman, Groom, or Postillion, or in the Capacity of Gardener (not being a Day-labourer), Park-keeper, Game-keeper, Huntsman, Whipper-in . . . .".

[4] The statute, amended from time to time, but with its basic structure unaffected, is on the statute books today. Act of 1803, 43 George III, c. 161; Act of 1812, 52 George III, c. 93; Act of 1853, 16 & 17 Vict., c. 90; Act of 1869, 32 & 33 Vict., c. 14. 24 Halsbury's Laws of England, 1st ed., pp. 692 *et seq.*

[5] See also the following laws imposing occupation taxes: 12 Hening's Statutes of Virginia, p. 285, Act of 1786; Chandler, The Colonial Records of Georgia, vol. 19, Part 2, p. 88, Act of 1778; 1 Potter, Taylor and Yancey, North Carolina Revised Laws, p. 501, Act of 1784.

[6] The cases are brought together by Professor John MacArthur Maguire in an essay, "Taxing the Exercise of Natural Rights" (Harvard Legal Essays, 1934, pp. 273, 322).

The Massachusetts decisions must be read in the light of the particular definitions and restrictions of the Massachusetts Constitution. Opinions of the Justices, 282 Mass. 619, 622; 266 Mass. 590, 593. And see Howes Brothers Co. v. Massachusetts Unemployment Compensation Commission, *supra*, pp. 730, 731.

vocations or activities that may be prohibited altogether. It is not limited to those that are the outcome of a franchise. It extends to vocations or activities pursued as of common right. What the individual does in the operation of a business is amenable to taxation just as much as what he owns, at all events if the classification is not tyrannical or arbitrary. "Business is as legitimate an object of the taxing powers as property." *City of Newton* v. *Atchison*, 31 Kan. 151, 154 (per Brewer, J.). Indeed, ownership itself, as we had occasion to point out the other day, is only a bundle of rights and privileges invested with a single name. *Henneford* v. *Silas Mason Co., Inc.*, March 29, 1937, — U. S. —. "A state is at liberty, if it pleases, to tax them all collectively, or to separate the faggots and lay the charge distributively." *Ibid.* Employment is a business relation, if not itself a business. It is a relation without which business could seldom be carried on effectively. The power to tax the activities and relations that constitute a calling considered as a unit is the power to tax any of them. The whole includes the parts. *Nashville C. & St. L. Ry. Co.* v. *Wallace*, 288 U. S. 249, 267, 268.

The subject matter of taxation open to the power of the Congress is as comprehensive as that open to the power of the states, though the method of apportionment may at times be different. "The Congress shall have power to lay and collect taxes, duties, imposts and excises". Art. 1, §8. If the tax is a direct one, it shall be apportioned according to the census or enumeration. If it is a duty, impost, or excise, it shall be uniform throughout the United States. Together, these classes include every form of tax appropriate to sovereignty. Cf. *Burnet* v. *Brooks*, 288 U. S. 378, 403, 405; *Brushaber* v. *Union Pacific R. R. Co.*, 240 U. S. 1, 12. Whether the tax is to be classified as an "excise" is in truth not of critical importance. If not that, it is an "impost" (*Pollock* v. *Farmers' Loan and Trust Co.*, 158 U. S. 601, 622, 625; *Pacific Insurance Co.* v. *Soule*, 7 Wall. 433, 445), or a "duty" (*Veazie Bank* v. *Fenno*, 8 Wall. 533, 546, 547; *Pollock* v. *Farmers' Loan and Trust Co.*, 157 U. S. 429, 570; *Knowlton* v. *Moore*, 178 U. S. 41, 46). A capitation or other "direct" tax it certainly is not. "Although there have been from time to time intimations that there might be some tax which was not a direct tax nor included under the words 'duties, imposts and excises,' such a tax for more than one hundred years of national existence has as yet remained undiscovered, not-

withstanding the stress of particular circumstances has invited thorough investigation into sources of powers." *Pollock* v. *Farmers'-Loan and Trust Co.*, 157 U. S. 429, 557. There is no departure from that thought in later cases, but rather a new emphasis of it. Thus, in *Thomas* v. *United States*, 192 U. S. 363, 370, it was said of the words "duties, imposts and excises" that "they were used comprehensively to cover customs and excise duties imposed on importation, consumption, manufacture and sale of certain commodities, privileges, particular business transactions, vocations, occupations and the like." At times taxpayers have contended that the Congress is without power to lay an excise on the enjoyment of a privilege created by state law. The contention has been put aside as baseless. Congress may tax the transmission of property by inheritance or will, though the states and not Congress have created the privilege of succession. *Knowlton* v. *Moore, supra*, p. 58. Congress may tax the enjoyment of a corporate franchise, though a state and not Congress has brought the franchise into being. *Flint* v. *Stone Tracy Co.*, 220 U. S. 108, 155. The statute books of the states are strewn with illustrations of taxes laid on occupations pursued of common right.[7] We find no basis for a holding that the power in that regard which belongs by accepted practice to the legislatures of the states, has been denied by the Constitution to the Congress of the nation.

2. The tax being an excise, its imposition must conform to the canon of uniformity. There has been no departure from this requirement. According to the settled doctrine the uniformity exacted is geographical, not intrinsic. *Knowlton* v. *Moore, supra*, p. 83; *Flint* v. *Stone Tracy Co., supra*, p. 158; *Billings* v. *United States*, 232 U. S. 261, 282; *Stellwagen* v. *Clum*, 245 U. S. 605, 613; *LaBelle Iron Works* v. *United States*, 256 U. S. 377, 392; *Poe* v.

[7] Alabama General Acts, 1935, c. 194, Art. XIII (flat license tax on occupations); Arizona Revised Code, Supplement (1936) § 3138a *et seq.* (general gross receipts tax); Connecticut General Statutes, Supplement (1935) §§ 457c, 458c (gross receipts tax on unincorporated businesses); Revised Code of Delaware (1935) §§ 192-197 (flat license tax on occupations); Compiled Laws of Florida, Permanent Supplement (1936) Vol. I, § 1279 (flat license tax on occupations); Georgia Laws, 1935, p. 11 (flat license tax on occupations); Indiana Statutes Ann. (1933) § 64-2601 *et seq.* (general gross receipts tax); Louisiana Laws, 3rd Extra Session, 1934, Act No. 15, 1st Extra Session, 1935, Acts Nos. 5, 6 (general gross receipts tax); Mississippi Laws, 1934, c. 119 (general gross receipts tax); New Mexico Laws, 1935, c. 73 (general gross receipts tax); South Dakota Laws, 1933, c. 184 (general gross receipts tax, expired June 30, 1935); Washington Laws, 1935, c. 180, Title II (general gross receipts tax); West Virginia Code, Supplement (1935) § 960 (general gross receipts tax).

Seaborn, 282 U. S. 101, 117; *Wright* v. *Vinton Branch Mountain Trust Bank*, March 29, 1937, — U. S. —. "The rule of liability shall be the same in all parts of the United States." *Florida* v. *Mellon*, 273 U. S. 12, 17.

Second: The excise is not invalid under the provisions of the Fifth Amendment by force of its exemptions.

The statute does not apply, as we have seen, to employers of less than eight. It does not apply to agricultural labor, or domestic service in a private home or to some other classes of less importance. Petitioner contends that the effect of these restrictions is an arbitrary discrimination vitiating the tax.

The Fifth Amendment unlike the Fourteenth has no equal protection clause. *LaBelle Iron Works* v. *United States, supra; Brushaber* v. *Union Pacific R. R. Co., supra*, p. 24. But even the states, though subject to such a clause, are not confined to a formula of rigid uniformity in framing measures of taxation. *Swiss Oil Corp.* v. *Shanks*, 273 U. S. 407, 413. They may tax some kinds of property at one rate, and others at another, and exempt others altogether. *Bell's Gap R. R. Co.* v. *Pennsylvania*, 134 U. S. 232; *Stebbins* v. *Riley*, 268 U. S. 137, 142; *Ohio Oil Co.* v. *Conway*, 281 U. S. 146, 150. They may lay an excise on the operations of a particular kind of business, and exempt some other kind of business closely akin thereto. *Quong Wing* v. *Kirkendall*, 223 U. S. 59, 62; *American Sugar Refining Co.* v. *Louisiana*, 179 U. S. 89, 94; *Armour Packing Co.* v. *Lacy*, 200 U. S. 226, 235; *Brown-Forman Co.* v. *Kentucky*, 217 U. S. 563, 573; *Heisler* v. *Thomas Colliery Co.*, 260 U. S. 245, 255; *State Board of Tax Comm'rs* v. *Jackson*, 283 U. S. 527, 537, 538. If this latitude of judgment is lawful for the states, it is lawful, a fortiori, in legislation by the Congress, which is subject to restraints less narrow and confining. *Quong Wing* v. *Kirkendall, supra.*

The classifications and exemptions directed by the statute now in controversy have support in considerations of policy and practical convenience that cannot be condemned as arbitrary. The classifications and exemptions would therefore be upheld if they had been adopted by a state and the provisions of the Fourteenth Amendment were invoked to annul them. This is held in two cases passed upon today in which precisely the same provisions were the subject of attack, the provisions being contained in the Unemployment Compensation Law of the State of Alabama. *Carmichael* v.

Southern Coal & Coke Co., No. 724, — U. S. —, and *Carmichael* v. *Gulf States Paper Corp.*, No. 797, —— U. S. ——. The opinion rendered in those cases covers the ground fully. It would be useless to repeat the argument. The act of Congress is therefore valid, so far at least as its system of exemptions is concerned, and this though we assume that discrimination, if gross enough, is equivalent to confiscation and subject under the Fifth Amendment to challenge and annulment.

Third: The excise is not void as involving the coercion of the States in contravention of the Tenth Amendment or of restrictions implicit in our federal form of government.

The proceeds of the excise when collected are paid into the Treasury at Washington, and thereafter are subject to appropriation like public moneys generally. *Cincinnati Soap Co.* v. *United States*, May 3, 1937, — U. S. —. No presumption can be indulged that they will be misapplied or wasted.[8] Even if they were collected in the hope or expectation that some other and collateral good would be furthered as an incident, that without more would not make the act invalid. *Sonzinsky* v. *United States*, March 29, 1937, — U. S. —. This indeed is hardly questioned. The case for the petitioner is built on the contention that here an ulterior aim is wrought into the very structure of the act, and what is even more important that the aim is not only ulterior, but essentially unlawful. In particular, the 90 per cent credit is relied upon as supporting that conclusion. But before the statute succumbs to an assault upon these lines, two propositions must be made out by the assailant. *Cincinnati Soap Co.* v. *United States, supra.* There must be a showing in the first place that separated from the credit the revenue provisions are incapable of standing by themselves. There must be a showing in the second place that the tax and the credit in combination are weapons of coercion, destroying or impairing the autonomy of the states. The truth of each proposition being essential to the success of the assault, we pass for convenience to a consideration of the second, without pausing to inquire whether there has been a demonstration of the first.

[8] The total estimated receipts without taking into account the 90 per cent deduction, range from $225,000,000 in the first year to over $900,000,000 seven years later. Even if the maximum credits are available to taxpayers in all states, the maximum estimated receipts from Title IX will range between $22,000,000, at one extreme, to $90,000,000 at the other. If some of the states hold out in their unwillingness to pass statutes of their own, the receipts will be still larger.

To draw the line intelligently between duress and inducement there is need to remind ourselves of facts as to the problem of unemployment that are now matters of common knowledge. *West Coast Hotel Co.* v. *Parrish*, March 29, 1937, —— U. S. ——. The relevant statistics are gathered in the brief of counsel for the Government. Of the many available figures a few only will be mentioned. During the years 1929 to 1936, when the country was passing through a cyclical depression, the number of the unemployed mounted to unprecedented heights. Often the average was more than 10 million; at times a peak was attained of 16 million or more. Disaster to the breadwinner meant disaster to dependents. Accordingly the roll of the unemployed, itself formidable enough, was only a partial roll of the destitute or needy. The fact developed quickly that the states were unable to give the requisite relief. The problem had become national in area and dimensions. There was need of help from the nation if the people were not to starve. It is too late today for the argument to be heard with tolerance that in a crisis so extreme the use of the moneys of the nation to relieve the unemployed and their dependents is a use for any purpose narrower than the promotion of the general welfare. Cf. *United States* v. *Butler*, 297 U. S. 1, 65, 66, *Helvering* v. *Davis*, decided herewith. The nation responded to the call of the distressed. Between January 1, 1933 and July 1, 1936, the states (according to statistics submitted by the Government) incurred obligations of $689,291,802 for emergency relief; local subdivisions an additional $775,675,366. In the same period the obligations for emergency relief incurred by the national government were $2,929,307,125, or twice the obligations of states and local agencies combined. According to the President's budget message for the fiscal year 1938, the national government expended for public works and unemployment relief for the three fiscal years 1934, 1935, and 1936, the stupendous total of $8,681,000,000. The *parens patriae* has many reasons—fiscal and economic as well as social and moral—for planning to mitigate disasters that bring these burdens in their train.

In the presence of this urgent need for some remedial expedient, the question is to be answered whether the expedient adopted has overlept the bounds of power. The assailants of the statute say that its dominant end and aim is to drive the state legislatures

under the whip of economic pressure into the enactment of unemployment compensation laws at the bidding of the central government. Supporters of the statute say that its operation is not constraint, but the creation of a larger freedom, the states and the nation joining in a coöperative endeavor to avert a common evil. Before Congress acted, unemployment compensation insurance was still, for the most part, a project and no more. Wisconsin was the pioneer. Her statute was adopted in 1931. At times bills for such insurance were introduced elsewhere, but they did not reach the stage of law. In 1935, four states (California, Massachusetts, New Hampshire and New York) passed unemployment laws on the eve of the adoption of the Social Security Act, and two others did likewise after the federal act and later in the year. The statutes differed to some extent in type, but were directed to a common end. In 1936, twenty-eight other states fell in line, and eight more the present year. But if states had been holding back before the passage of the federal law, inaction was not owing, for the most part, to the lack of sympathetic interest. Many held back through alarm lest in laying such a toll upon their industries, they would place themselves in a position of economic disadvantage as compared with neighbors or competitors. See House Report, No. 615, 74th Congress, 1st session, p. 8; Senate Report, No. 628, 74th Congress, 1st session, p. 11.* Two consequences ensued. One was that the freedom of a state to contribute its fair share to the solution of a national problem was paralyzed by fear. The other was that in so far as there was failure by the states to contribute relief according to the measure of their capacity, a disproportionate burden, and a mountainous one, was laid upon the resources of the Government of the nation.

The Social Security Act is an attempt to find a method by which all these public agencies may work together to a common end. Every dollar of the new taxes will continue in all likelihood to be

* The attitude of Massachusetts is significant. Her act became a law August 12, 1935, two days before the federal act. Even so, she prescribed that its provisions should not become operative unless the federal bill became a law, and unless eleven of the following states (Alabama, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Maine, Maryland, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Rhode Island, South Carolina, Tennessee, Vermont) should impose on their employers burdens substantially equivalent. Acts of 1935, c. 479, p. 655. Her fear of competition is thus forcefully attested. See also California Laws, 1935, c. 352, Art. I, § 2; Idaho Laws, 1936 (Third Extra Session) c. 12, § 26; Mississippi Laws, 1936, c. 176, § 2-a.

used and needed by the nation as long as states are unwilling, whether through timidity or for other motives, to do what can be done at home. At least the inference is permissible that Congress so believed, though retaining undiminished freedom to spend the money as it pleased. On the other hand fulfilment of the home duty will be lightened and encouraged by crediting the taxpayer upon his account with the Treasury of the nation to the extent that his contributions under the laws of the locality have simplified or diminished the problem of relief and the probable demand upon the resources of the fisc. Duplicated taxes, or burdens that approach them, are recognized hardships that government, state or national, may properly avoid. *Henneford* v. *Silas Mason Co., Inc., supra; Kidd* v. *Alabama,* 188 U. S. 730, 732; *Watson* v. *State Comptroller,* 254 U. S. 122, 125. If Congress believed that the general welfare would better be promoted by relief through local units than by the system then in vogue, the cooperating localities ought not in all fairness to pay a second time.

Who then is coerced through the operation of this statute? Not the taxpayer. He pays in fulfilment of the mandate of the local legislature. Not the state. Even now she does not offer a suggestion that in passing the unemployment law she was affected by duress. See *Carmichael* v. *Southern Coal & Coke Co., supra; Carmichael* v. *Gulf States Paper Corp., supra.* For all that appears she is satisfied with her choice, and would be sorely disappointed if it were now to be annulled. The difficulty with the petitioner's contention is that it confuses motive with coercion. "Every tax is in some measure regulatory. To some extent it interposes an economic impediment to the activity taxed as compared with others not taxed." *Sonzinsky* v. *United States, supra.* In like manner every rebate from a tax when conditioned upon conduct is in some measure a temptation. But to hold that motive or temptation is equivalent to coercion is to plunge the law in endless difficulties. The outcome of such a doctrine is the acceptance of a philosophical determinism by which choice becomes impossible. Till now the law has been guided by a robust common sense which assumes the freedom of the will as a working hypothesis in the solution of its problems. The wisdom of the hypothesis has illustration in this case. Nothing in the case suggests the exertion of a power akin to undue influence, if we assume that such a concept can ever be

applied with fitness to the relations between state and nation. Even on that assumption the location of the point at which pressure turns into compulsion, and ceases to be inducement, would be a question of degree,—at times, perhaps, of fact. The point had not been reached when Alabama made her choice. We cannot say that she was acting, not of her unfettered will, but under the strain of a persuasion equivalent to undue influence, when she chose to have relief administered under laws of her own making, by agents of her own selection, instead of under federal laws, administered by federal officers, with all the ensuing evils, at least to many minds, of federal patronage and power. There would be a strange irony, indeed, if her choice were now to be annulled on the basis of an assumed duress in the enactment of a statute which her courts have accepted as a true expression of her will. *Beeland Wholesale Co.* v. *Kaufman, supra.* We think the choice must stand.

In ruling as we do, we leave many questions open. We do not say that a tax is valid, when imposed by act of Congress, if it is laid upon the condition that a state may escape its operation through the adoption of a statute unrelated in subject matter to activities fairly within the scope of national policy and power. No such question is before us. In the tender of this credit Congress does not intrude upon fields foreign to its function. The purpose of its intervention, as we have shown, is to safeguard its own treasury and as an incident to that protection to place the states upon a footing of equal opportunity. Drains upon its own resources are to be checked; obstructions to the freedom of the states are to be leveled. It is one thing to impose a tax dependent upon the conduct of the taxpayers, or of the state in which they live, where the conduct to be stimulated or discouraged is unrelated to the fiscal need subserved by the tax in its normal operation, or to any other end legitimately national. The *Child Labor Tax Case*, 259 U. S. 20, and *Hill* v. *Wallace*, 259 U. S. 44, were decided in the belief that the statutes there condemned were exposed to that reproach. Cf. *United States* v. *Constantine*, 296 U. S. 287. It is quite another thing to say that a tax will be abated upon the doing of an act that will satisfy the fiscal need, the tax and the alternative being approximate equivalents. In such circumstances, if in no others, inducement or persuasion does not go beyond the bounds of power. We do not fix the outermost line. Enough for present purposes that wherever the line may be, this statute is within it. Definition more precise must abide the wisdom of the future.

Florida v. *Mellon*, 273 U. S. 12, supplies us with a precedent, if precedent be needed. What was in controversy there was section 301 of the Revenue Act of 1926, which imposes a tax upon the transfer of a decedent's estate, while at the same time permitting a credit, not exceeding 80 per cent, for "the amount of any estate, inheritance, legacy or succession taxes actually paid to any State or Territory". Florida challenged that provision as unlawful. Florida had no inheritance taxes and alleged that under its constitution it could not levy any. 273 U. S. 12, 15. Indeed, by abolishing inheritance taxes, it had hoped to induce wealthy persons to become its citizens. See 67 Cong. Rec., Part 1, pp. 735, 752. It argued at our bar that "the Estate Tax provision was not passed for the purpose of raising federal revenue" (273 U. S. 12, 14), but rather "to coerce States into adopting estate or inheritance tax laws." 273 U. S. 12, 13. In fact, as a result of the 80 per cent credit, material changes of such laws were made in 36 states.[10] In the face of that attack we upheld the act as valid. Cf. *Massachusetts* v. *Mellon*, 262 U. S. 447, 482; also Act of August 5, 1861, c. 45, 12 Stat. 292; Act of May 13, 1862, c. 66, 12 Stat. 384.

United States v. *Butler*, *supra*, is cited by petitioner as a decision to the contrary. There a tax was imposed on processors of farm products, the proceeds to be paid to farmers who would reduce their acreage and crops under agreements with the Secretary of Agriculture, the plan of the act being to increase the prices of certain farm products by decreasing the quantities produced. The court held (1) that the so-called tax was not a true one (pp. 56, 61), the proceeds being earmarked for the benefit of farmers complying with the prescribed conditions, (2) that there was an attempt to regulate production without the consent of the state in which production was affected, and (3) that the payments to farmers were coupled with coercive contracts (p. 73), unlawful in their aim and oppressive in their consequences. The decision was by a divided court, a minority taking the view that the objections were untenable. None of them is applicable to the situation here developed.

(a) The proceeds of the tax in controversy are not earmarked for a special group.

(b) The unemployment compensation law which is a condition of the credit has had the approval of the state and could not be a law without it.

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[10] Perkins, State action under the Federal Estate Tax Credit Clause, 13 North Carolina L. Rev. 271, 280.

(c) The condition is not linked to an irrevocable agreement, for the state at its pleasure may repeal its unemployment law (Section 903 (a) (6)), terminate the credit, and place itself where it was before the credit was accepted.

(d) The condition is not directed to the attainment of an unlawful end, but to an end, the relief of unemployment, for which nation and state may lawfully coöperate.

Fourth: The statute does not call for a surrender by the states of powers essential to their quasi-sovereign existence.

Argument to the contrary has its source in two sections of the act. One section (903[11]) defines the minimum criteria to which a state compensation system is required to conform if it is to be accepted by the Board as the basis for a credit. The other section (904[12]) rounds out the requirement with complementary rights and duties. Not all the criteria or their incidents are challenged as unlawful. We will speak of them first generally, and then more specifically in so far as they are questioned.

A credit to taxpayers for payments made to a State under a state unemployment law will be manifestly futile in the absence of some assurance that the law leading to the credit is in truth what it professes to be. An unemployment law framed in such a way that the unemployed who look to it will be deprived of reasonable protection is one in name and nothing more. What is basic and essential may be assured by suitable conditions. The terms embodied in these sections are directed to that end. A wide range of judgment is given to the several states as to the particular type of statute to be spread upon their books. For anything to the contrary in the provisions of this act they may use the pooled unemployment form, which is in effect with variations in Alabama, California, Michigan, New York, and elsewhere. They may establish a system of merit ratings applicable at once or to go into effect later on the basis of subsequent experience. Cf. Sections 909, 910. They may provide for employee contributions as in Alabama and California, or put the entire burden upon the employer as in New York. They may choose a system of unemployment reserve accounts by which an employer is permitted after his reserve has accumulated to contribute at a reduced rate or even not at all.

[11] See note 1, *supra*.

[12] See note 2, *supra*.

This is the system which had its origin in Wisconsin. What they may not do, if they would earn the credit, is to depart from those standards which in the judgment of Congress are to be ranked as fundamental. Even if opinion may differ as to the fundamental quality of one or more of the conditions, the difference will not avail to vitiate the statute. In determining essentials Congress must have the benefit of a fair margin of discretion. One cannot say with reason that this margin has been exceeded, or that the basic standards have been determined in any arbitrary fashion. In the event that some particular condition shall be found to be too uncertain to be capable of enforcement, it may be severed from the others, and what is left will still be valid.

We are to keep in mind steadily that the conditions to be approved by the Board as the basis for a credit are not provisions of a contract, but terms of a statute, which may be altered or repealed. Section 903 (a) (6). The state does not bind itself to keep the law in force. It does not even bind itself that the moneys paid into the federal fund will be kept there indefinitely or for any stated time. On the contrary, the Secretary of the Treasury will honor a requisition for the whole or any part of the deposit in the fund whenever one is made by the appropriate officials. The only consequence of the repeal or excessive amendment of the statute, or the expenditure of the money, when requisitioned, for other than compensation uses or administrative expenses, is that approval of the law will end, and with it the allowance of a credit, upon notice to the state agency and an opportunity for hearing. Section 903 (b) (c).

These basic considerations are in truth a solvent of the problem. Subjected to their test, the several objections on the score of abdication are found to be unreal.

Thus, the argument is made that by force of an agreement the moneys when withdrawn must be "paid through public employment offices in the State or through such other agencies as the Board may approve." Section 903 (a) (1). But in truth there is no agreement as to the method of disbursement. There is only a condition which the state is free at pleasure to disregard or to fulfill. Moreover, approval is not requisite if public employment offices are made the disbursing instruments. Approval is to be a check upon resort to "other agencies" that may, perchance, be irresponsible. A state looking for a credit must give assurance that her system has been organized upon a base of rationality.

There is argument again that the moneys when withdrawn are to be devoted to specific uses, the relief of unemployment, and that by agreement for such payment the quasi-sovereign position of the state has been impaired, if not abandoned. But again there is confusion between promise and condition. Alabama is still free, without breach of an agreement, to change her system over night. No officer or agency of the national Government can force a compensation law upon her or keep it in existence. No officer or agency of that Government, either by suit or other means, can supervise or control the application of the payments.

Finally and chiefly, abdication is supposed to follow from section 904 of the statute and the parts of section 903 that are complementary thereto. Section 903 (a) (3). By these the Secretary of the Treasury is authorized and directed to receive and hold in the Unemployment Trust Fund all moneys deposited therein by a state agency for a state unemployment fund and to invest in obligations of the United States such portion of the Fund as is not in his judgment required to meet current withdrawals. We are told that Alabama in consenting to that deposit has renounced the plenitude of power inherent in her statehood.

The same pervasive misconception is in evidence again. All that the state has done is to say in effect through the enactment of a statute that her agents shall be authorized to deposit the unemployment tax receipts in the Treasury at Washington. Alabama Unemployment Act of September 14, 1935, section 10 (i). The statute may be repealed. Section 903 (a) (6). The consent may be revoked. The deposits may be withdrawn. The moment the state commission gives notice to the depositary that it would like the moneys back, the Treasurer will return them. To find state destruction there is to find it almost anywhere. With nearly as much reason one might say that a state abdicates its functions when it places the state moneys on deposit in a national bank.

There are very good reasons of fiscal and governmental policy why a State should be willing to make the Secretary of the Treasury the custodian of the fund. His possession of the moneys and his control of investments will be an assurance of stability and safety in times of stress and strain. A report of the Ways and Means Committee of the House of Representatives, quoted in the

margin, develops the situation clearly.[13] Nor is there risk of loss or waste. The credit of the Treasury is at all times back of the deposit, with the result that the right of withdrawal will be unaffected by the fate of any intermediate investments, just as if a checking account in the usual form had been opened in a bank.

The inference of abdication thus dissolves in thinnest air when the deposit is conceived of as dependent upon a statutory consent, and not upon a contract effective to create a duty. By this we do not intimate that the conclusion would be different if a contract were discovered. Even sovereigns may contract without derogating from their sovereignty. *Perry* v. *United States*, 294 U. S. 330, 353; 1 Oppenheim, International Law, 4th ed., §§ 493, 494; Hall, International Law, 8th ed., § 107; 2 Hyde, International Law, § 489. The states are at liberty, upon obtaining the consent of Congress, to make agreements with one another. Constitution, Art. I, section 10, par. 3. *Poole* v. *Fleeger*, 11 Pet. 185, 209; *Rhode Island* v. *Massachusetts*, 12 Pet. 657, 725. We find no room for doubt that they may do the like with Congress if the essence of their statehood is maintained without impairment.[14] Alabama is seeking and obtaining a credit of many millions in favor of her citizens out of the Treasury of the nation. Nowhere in our scheme of government—in the limitations express or implied of our federal constitution—do we find that she is prohibited from assenting to conditions that will assure a fair and just requital for benefits received:

[13] "This last provision will not only afford maximum safety for these funds but is very essential to insure that they will operate to promote the stability of business rather than the reverse. Unemployment reserve funds have the peculiarity that the demands upon them fluctuate considerably, being heaviest when business slackens. If, in such times, the securities in which these funds are invested are thrown upon the market for liquidation, the net effect is likely to be increased deflation. Such a result is avoided in this bill through the provision that all reserve funds are to be held by the United States Treasury, to be invested and liquidated by the Secretary of the Treasury in a manner calculated to promote business stability. When business conditions are such that investment in securities purchased on the open market is unwise, the Secretary of the Treasury may issue special nonnegotiable obligations exclusively to the unemployment trust fund. When a reverse situation exists and heavy drains are made upon the fund for payment of unemployment benefits, the Treasury does not have to dispose of the securities belonging to the fund in open market but may assume them itself. With such a method of handling the reserve funds, it is believed that this bill will solve the problem often raised in discussions of unemployment compensation, regarding the possibility of transferring purchasing power from boom periods to depression periods. It will in fact operate to sustain purchasing power at the onset of a depression without having any counteracting deflationary tendencies." House Report, No. 615, 74th Congress, 1st session, p. 9.

[14] Cf. 12 Stat. 503; 26 Stat. 417.

But we will not labor the point further. An unreal prohibition directed to an unreal agreement will not vitiate an act of Congress, and cause it to collapse in ruin.

Fifth: Title III of the act is separable from Title IX, and its validity is not at issue.

The essential provisions of that title have been stated in the opinion. As already pointed out, the title does not appropriate a dollar of the public moneys. It does no more than authorize appropriations to be made in the future for the purpose of assisting states in the administration of their laws, if Congress shall decide that appropriations are desirable. The title might be expunged, and Title IX would stand intact. Without a severability clause we should still be led to that conclusion. The presence of such a clause (Section 1103) makes the conclusion even clearer. *Williams* v. *Standard Oil Co.*, 278 U. S. 235, 242; *Utah Power & Light Co.* v. *Pfost*, 286 U. S. 165, 184; *Carter* v. *Carter Coal Co.*, 298 U. S. 238, 312.

The judgment is

Affirmed.

SUPREME COURT OF THE UNITED STATES.

No. 837.—October Term, 1936.

Chas. C. Steward Machine Company, Petitioner, *vs.* Harwell G. Davis, Individually and as Collector of Internal Revenue.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

[May 24, 1937.]

Separate opinion of Mr. Justice McReynolds.

That portion of the Social Security legislation here under consideration, I think, exceeds the power granted to Congress. It unduly interferes with the orderly government of the State by her own people and otherwise offends the Federal Constitution.

In *Texas* v. *White*, 7 Wall. 700, 725 (1869), a cause of momentous importance, this Court, through Chief Justice Chase, declared—

"But the perpetuity and indissolubility of the Union, by no means implies the loss of distinct and individual existence, or of the right of self-government by the States. Under the Articles of Confederation each State retained its sovereignty, freedom, and independence, and every power, jurisdiction, and right not expressly delegated to the United States. Under the Constitution, though the powers of the States were much restricted, still, all powers not delegated to the United States, nor prohibited to the States, are reserved to the States respectively, or to the people. And we have already had occasion to remark at this term, that 'the people of each State compose a State, having its own government, and endowed with all the functions essential to separate and independent existence,' and that 'without the States in union, there could be no such political body as the United States.' [*Lane County* v. *Oregon*, 7 Wall. 71, 76.] Not only, therefore, can there be no loss of separate and independent autonomy to the States, through their union under the Constitution, but it may be not unreasonably said that the preservation of the States, and the maintenance of their governments, are as much within the design and care of the Constitution as the preservation of the Union and the maintenance of the National government. The Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States."

The doctrine thus announced and often repeated, I had supposed was firmly established. Apparently the States remained really free to exercise governmental powers, not delegated or prohibited, without interference by the Federal Government through threats of punitive measures or offers of seductive favors. Unfortunately, the decision just announced opens the way for practical annihilation of this theory; and no cloud of words or ostentatious parade of irrelevant statistics should be permitted to obscure that fact.

The invalidity also the destructive tendency of legislation like the Act before us were forcefully pointed out by President Franklin Pierce in a veto message sent to the Senate May 3, 1854.[1] He was a scholarly lawyer of distinction and enjoyed the advice and counsel of a rarely able Attorney General — Caleb Cushing of Massachusetts. This message considers with unusual lucidity points here specially important. I venture to set out pertinent portions of it which must appeal to all who continue to respect both the letter and spirit of our great charter.

"To the Senate of the United States:

"The bill entitled 'An Act making a grant of public lands to the several States for the benefit of indigent insane persons,' which was presented to me on the 27th ultimo, has been maturely considered, and is returned to the Senate, the House in which it originated, with a statement of the objections which have required me to withhold from it my approval.

. . . . . .

"If in presenting my objections to this bill I should say more than strictly belongs to the measure or is required for the discharge of my official obligation, let it be attributed to a sincere desire to justify my act before those whose good opinion I so highly value and to that earnestness which springs from my deliberate conviction that a strict adherence to the terms and purposes of the federal compact offers the best, if not the only, security for the preservation of our blessed inheritance of representative liberty.

"The bill provides in substance:

"First. That 10,000,000 acres of land be granted to the several States, to be apportioned among them in the compound ratio of the geographical area and representation of said States in the House of Representatives.

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1 "Messages and Papers of the President" by James D. Richardson, Vol. V, pp. 247-256.

"Second. That wherever there are public lands in a State subject to sale at the regular price of private entry, the proportion of said 10,000,000 acres falling to such State shall be selected from such lands within it, and that to the States in which there are no such public lands land scrip shall be issued to the amount of their distributive shares, respectively, said scrip not to be entered by said States, but to be sold by them and subject to entry by their assignees: Provided, That none of it shall be sold at less than $1 per acre, under penalty of forfeiture of the same to the United States.

"Third. That the expenses of the management and superintendence of said lands and of the moneys received therefrom shall be paid by the States to which they may belong out of the treasury of said States.

"Fourth. That the gross proceeds of the sales of such lands or land scrip so granted shall be invested by the several States in safe stocks, to constitute a perpetual fund, the principal of which shall remain forever undiminished, and the interest to be appropriated to the maintenance of the indigent insane within the several States.

"Fifth. That annual returns of lands or scrip sold shall be made by the States to the Secretary of the Interior, and the whole grant be subject to certain conditions and limitations prescribed in the bill, to be assented to by legislative acts of said States.

"This bill therefore proposes that the Federal Government shall make provision to the amount of the value of 10,000,000 acres of land for an eleemosynary object within the several States, to be administered by the political authority of the same; and it presents at the threshold the question whether any such act on the part of the Federal Government is warranted and sanctioned by the Constitution, the provisions and principles of which are to be protected and sustained as a first and paramount duty.

"It can not be questioned that if Congress has power to make provision for the indigent insane without the limits of this District it has the same power to provide for the indigent who are not insane, and thus to transfer to the Federal Government the charge of all the poor in all the States. It has the same power to provide hospitals and other local establishments for the care and cure of every species of human infirmity, and thus to assume all that duty of either public philanthropy or public necessity to the dependent, the orphan, the sick, or the needy which is now discharged by the States themselves or by corporate institutions or private endowments existing under the legislation of the States. The whole field of public beneficence is thrown open to the care and culture of the Federal Government. Generous impulses no longer encounter the limitations and control of our imperious fundamental law; for however worthy may be the present object in itself, it is only one

of a class. It is not exclusively worthy of benevolent regard. Whatever considerations dictate sympathy for this particular object apply in like manner, if not in the same degree, to idiocy, to physical disease, to extreme destitution. If Congress may and ought to provide for any one of these objects, it may and ought to provide for them all. And if it be done in this case, what answer shall be given when Congress shall be called upon, as it doubtless will be, to pursue a similar course of legislation in the others? It will obviously be vain to reply that the object is worthy, but that the application has taken a wrong direction. The power will have been deliberately assumed, the general obligation will by this act have been acknowledged, and the question of means and expediency will alone be left for consideration. The decision upon the principle in any one case determines it for the whole class. The question presented, therefore, clearly is upon the constitutionality and propriety of the Federal Government assuming to enter into a novel and vast field of legislation, namely, that of providing for the care and support of all those among the people of the United States who by any form of calamity become fit objects of public philanthropy.

"I readily and, I trust, feelingly acknowledge the duty incumbent on us all as men and citizens, and as among the highest and holiest of our duties, to provide for those who, in the mysterious order of Providence, are subject to want and to disease of body or mind; but I can not find any authority in the Constitution for making the Federal Government the great almoner of public charity throughout the United States. To do so would, in my judgment, be contrary to the letter and spirit of the Constitution and subversive of the whole theory upon which the Union of these States is founded. And if it were admissible to contemplate the exercise of this power for any object whatever, I can not avoid the belief that it would in the end be prejudicial rather than beneficial in the noble offices of charity to have the charge of them transferred from the States to the Federal Government. Are we not too prone to forget that the Federal Union is the creature of the States, not they of the Federal Union? We were the inhabitants of colonies distinct in local government one from the other before the Revolution. By the Revolution the colonies each became an independent State. They achieved that independence and secured its recognition by the agency of a consulting body, which, from being an assembly of the ministers of distinct sovereignties instructed to agree to no form of government which did not leave the domestic concerns of each State to itself, was appropriately denominated a Congress. When, having tried the experiment of the Confederation, they resolved to change that for the present Federal Union, and thus to confer on the Federal Government more ample

authority, they scrupulously measured such of the functions of their cherished sovereignty as they chose to delegate to the General Government. With this aim and to this end the fathers of the Republic framed the Constitution, in and by which the independent and sovereign States united themselves for certain specified objects and purposes, and for those only, leaving all powers not therein set forth as conferred on one or another of the three great departments—the legislative, the executive, and the judicial—indubitably with the States. And when the people of the several States had in their State conventions, and thus alone, given effect and force to the Constitution, not content that any doubt should in future arise as to the scope and character of this act, they ingrafted thereon the explicit declaration that 'the powers not delegated to the United States by the Constitution nor prohibited by it to the States are reserved to the States respectively or to the people.'

"Can it be controverted that the great mass of the business of Government—that involved in the social relations, the internal arrangements of the body politic, the mental and moral culture of men, the development of local resources of wealth, the punishment of crimes in general, the preservation of order, the relief of the needy or otherwise unfortunate members of society—did in practice remain with the States; that none of these objects of local concern are by the Constitution expressly or impliedly prohibited to the States, and that none of them are by any express language of the Constitution transferred to the United States? Can it be claimed that any of these functions of local administration and legislation are vested in the Federal Government by any implication? I have never found anything in the Constitution which is susceptible of such a construction. No one of the enumerated powers touches the subject or has even a remote analogy to it. The powers conferred upon the United States have reference to federal relations, or to the means of accomplishing or executing things of federal relation. So also of the same character are the powers taken away from the States by enumeration. In either case the powers granted and the powers restricted were so granted or so restricted only where it was requisite for the maintenance of peace and harmony between the States or for the purpose of protecting their common interests and defending their common sovereignty against aggression from abroad or insurrection at home.

"I shall not discuss at length the question of power sometimes claimed for the General Government under the clause of the eighth section of the Constitution, which gives Congress the power 'to lay and collect taxes, duties, imposts, and excises, to pay debts and provide for the common defense and general welfare of the United States,' because if it has not already been settled upon sound reason and authority it never will be. I take the received and just con-

struction of that article, as if written to lay and collect taxes, duties, imposts, and excises *in order* to pay the debts and *in order* to provide for the common defense and general welfare. It is not a substantive general power to provide for the welfare of the United States, but is a limitation on the grant of power to raise money by taxes, duties, and imposts. If it were otherwise, all the rest of the Constitution, consisting of carefully enumerated and cautiously guarded grants of specific powers, would have been useless, if not delusive. It would be impossible in that view to escape from the conclusion that these were inserted only to mislead for the present, and, instead of enlightening and defining the pathway of the future, to involve its action in the mazes of doubtful construction. Such a conclusion the character of the men who framed that sacred instrument will never permit us to form. Indeed, to suppose it susceptible of any other construction would be to consign all the rights of the States and of the people of the States to the mere discretion of Congress, and thus to clothe the Federal Government with authority to control the sovereign States, by which they would have been dwarfed into provinces or departments and all sovereignty vested in an absolute consolidated central power, against which the spirit of liberty has so often and in so many countries struggled in vain.

"In my judgment you can not by tributes to humanity make any adequate compensation for the wrong you would inflict by removing the sources of power and political action from those who are to be thereby affected. If the time shall ever arrive when, for an object appealing, however strongly, to our sympathies, the dignity of the States shall bow to the dictation of Congress by conforming their legislation thereto, when the power and majesty and honor of those who created shall become subordinate to the thing of their creation, I but feebly utter my apprehensions when I express my firm conviction that we shall see 'the beginning of the end.'

"Fortunately, we are not left in doubt as to the purpose of the Constitution any more than as to its express language, for although the history of its formation, as recorded in the Madison Papers, shows that the Federal Government in its present form emerged from the conflict of opposing influences which have continued to divide statesmen from that day to this, yet the rule of clearly defined powers and of strict construction presided over the actual conclusion and subsequent adoption of the Constitution. President Madison, in the Federalist, says:

" 'The powers delegated to the proposed Constitution are few and defined. Those which are to remain in the State governments are numerous and indefinite. . . . Its [the General Government's] jurisdiction extends to certain enumerated objects only, and leaves to the several States a residuary and inviolable sovereignty over all other objects.'

"In the same spirit President Jefferson invokes 'the support of the State governments in all their rights as the most competent administrations for our domestic concerns and the surest bulwarks against anti-republican tendencies;' and President Jackson said that our true strength and wisdom are not promoted by invasions of the rights and powers of the several States, but that, on the contrary, they consist 'not in binding the States more closely to the center, but in leaving each more unobstructed in its proper orbit.'

"The framers of the Constitution, in refusing to confer on the Federal Government any jurisdiction over these purely local objects, in my judgment manifested a wise forecast and broad comprehension of the true interests of these objects themselves. It is clear that public charities within the States can be efficiently administered only by their authority. The bill before me concedes this, for it does not commit the funds it provides to the administration of any other authority.

"I can not but repeat what I have before expressed, that if the several States, many of which have already laid the foundation of munificent establishments of local beneficence, and nearly all of which are proceeding to establish them, shall be led to suppose, as, should this bill become a law, they will be, that Congress is to make provision for such objects, the fountains of charity will be dried up at home, and the several States, instead of bestowing their own means on the social wants of their own people, may themselves, through the strong temptation which appeals to states as to individuals, become humble suppliants for the bounty of the Federal Government, reversing their true relations to this Union.

. . . . . .

"I have been unable to discover any distinction on constitutional grounds or grounds of expediency between an appropriation of $10,000,000 directly from the money in the Treasury for the object contemplated and the appropriation of lands presented for my sanction, and yet I can not doubt that if the bill proposed $10,000,000 from the Treasury of the United States for the support of the indigent insane in the several States that the constitutional question involved in the act would have attracted forcibly the attention of Congress.

"I respectfully submit that in a constitutional point of view it is wholly immaterial whether the appropriation be in money or in land.

. . . . . .

"To assume that the public lands are applicable to ordinary State objects, whether of public structures, police, charity, or expenses of State administration, would be to disregard to the amount of the value of the public lands all the limitations of the Constitution and confound to that extent all distinctions between the rights and powers of the States and those of the United States; for if

the public lands may be applied to the support of the poor, whether sane or insane, if the disposal of them and their proceeds be not subject to the ordinary limitations of the Constitution, then Congress possesses unqualified power to provide for expenditures in the States by means of the public lands, even to the degree of defraying the salaries of governors, judges, and all other expenses of the government and internal administration within the several States.

"The conclusion from the general survey of the whole subject is to my mind irresistible, and closes the question both of right and of expediency so far as regards the principle of the appropriation proposed in this bill. Would not the admission of such power in Congress to dispose of the public domain work the practical abrogation of some of the most important provisions of the Constitution?

. . . . . .

"The general result at which I have arrived is the necessary consequence of those views of the relative rights, powers, and duties of the States and of the Federal Government which I have long entertained and often expressed and in reference to which my convictions do but increase in force with time and experience."

No defense is offered for the legislation under review upon the basis of emergency. The hypothesis is that hereafter it will continuously benefit unemployed members of a class. Forever, so far as we can see, the States are expected to function under federal direction concerning an internal matter. By the sanction of this adventure, the door is open for progressive inauguration of others of like kind under which it can hardly be expected that the States will retain genuine independence of action. And without independent States a Federal Union as contemplated by the Constitution becomes impossible.

At the bar counsel asserted that under the present Act the tax upon residents of Alabama during the first year will total $9,000,000. All would remain in the Federal Treasury but for the adoption by the State of measures agreeable to the National Board. If continued, these will bring relief from the payment of $8,000,000 to the United States.

Ordinarily, I must think, a denial that the challenged action of Congress and what has been done under it amount to coercion and impair freedom of government by the people of the State would be regarded as contrary to practical experience. Unquestionably our federate plan of government confronts an enlarged peril.

SUPREME COURT OF THE UNITED STATES.

No. 837.—October Term, 1937.

Chas. C. Steward Machine Company, Petitioner,
vs.
Harwell G. Davis, Individually and as Collector of Internal Revenue.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

[May 24, 1937.]

Separate opinion of Mr. Justice Sutherland.

With most of what is said in the opinion just handed down, I concur. I agree that the payroll tax levied is an excise within the power of Congress; that the devotion of not more than 90% of it to the credit of employers in states which require the payment of a similar tax under so-called unemployment-tax laws is not an unconstitutional use of the proceeds of the federal tax; that the provision making the adoption by the state of an unemployment law of a specified character a condition precedent to the credit of the tax does not render the law invalid. I agree that the states are not coerced by the federal legislation into adopting unemployment legislation. The provisions of the federal law may operate to induce the state to pass an employment law if it regards such action to be in its interest. But that is not coercion. If the act stopped here, I should accept the conclusion of the court that the legislation is not unconstitutional.

But the question with which I have difficulty is whether the administrative provisions of the act invade the governmental administrative powers of the several states reserved by the Tenth Amendment. A state may enter into contracts; but a state cannot, by contract or statute, surrender the execution, or a share in the execution, of any of its governmental powers either to a sister state or to the federal government, any more than the federal government can surrender the control of any of its governmental powers to a foreign nation. The power to tax is vital and fundamental, and, in the highest degree, governmental in character. Without it, the state

could not exist. Fundamental also, and no less important, is the governmental power to expend the moneys realized from taxation, and exclusively to administer the laws in respect of the character of the tax and the methods of laying and collecting it and expending the proceeds.

The people of the United States, by their Constitution, have affirmed a division of internal governmental powers between the federal government and the governments of the several states—committing to the first its powers by express grant and necessary implication; to the latter, or to the people, by reservation, "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States". The Constitution thus affirms the complete supremacy and independence of the state within the field of its powers. *Carter* v. *Carter Coal Co.*, 298 U. S. 238, 295. The federal government has no more authority to invade that field than the state has to invade the exclusive field of national governmental powers; for, in the oft-repeated words of this court in *Texas* v. *White*, 7 Wall. 700, 725, "the preservation of the States, and the maintenance of their governments, are as much within the design and care of the Constitution as the preservation of the Union and the maintenance of the National Government." The necessity of preserving each from every form of illegitimate intrusion or interference on the part of the other is so imperative as to require this court, when its judicial power is properly invoked, to view with a careful and discriminating eye any legislation challenged as constituting such an intrusion or interference. See *South Carolina* v. *United States*, 199 U. S. 437, 448.

The precise question, therefore, which we are required to answer by an application of these principles is whether the congressional act contemplates a surrender by the state to the federal government, in whole or in part, of any state governmental power to administer its own unemployment law or the state payroll-tax funds which it has collected for the purposes of that law. An affirmative answer to this question, I think, must be made.

I do not, of course, doubt the power of the state to select and utilize a depository for the safekeeping of its funds; but it is quite another thing to agree with the selected depository that the funds shall be withdrawn for certain stipulated purposes, and for no other. Nor do I doubt the authority of the federal government and a state government to cooperate to a common end, provided each of them is authorized to reach it. But such cooperation must

be effectuated by an exercise of the powers which they severally possess, and not by an exercise, through invasion or surrender, by one of them of the governmental power of the other.

An illustration of what I regard as permissible cooperation is to be found in Title I of the act now under consideration. By that title, federal appropriations for old-age assistance are authorized to be made to any state which shall have adopted a plan for old-age assistance conforming to designated requirements. But the state is not obliged, as a condition of having the federal bounty, to deposit in the federal treasury funds raised by the state. The state keeps its own funds and administers its own law in respect of them, without let or hindrance of any kind on the part of the federal government; so that we have simply the familiar case of federal aid upon conditions which the state, without surrendering any of its powers, may accept or not as it chooses. *Massachusetts* v. *Mellon*, 262 U. S. 447, 480, 482-483.

But this is not the situation with which we are called upon to deal in the present case. For here, the state *must* deposit the proceeds of its taxation in the federal treasury, upon terms which make the deposit suspiciously like a forced loan to be repaid only in accordance with restrictions imposed by federal law. Title IX, §§ 903 (a) (3), 904 (a), (b), (e). All moneys withdrawn from this fund must be used exclusively for the payment of compensation. §903 (a) (4). And this compensation is to be paid through public employment offices in the state or such other agencies as a *federal board may approve*. § 903 (a) (1). The act, it is true, recognizes [§ 903 (a) (6)] the power of the legislature to amend or repeal its compensation law at any time. But there is nothing in the act, as I read it, which justifies the conclusion that the state may, in that event, unconditionally withdraw its funds from the federal treasury. Section 903 (b) provides that the board shall certify in each taxable year to the Secretary of the Treasury each state whose law has been approved. But the board is forbidden to certify any state which the board finds has so changed its law that it no longer contains the provisions specified in subsection (a), "or has with respect to such taxable year failed to comply substantially with any such provision." The federal government, therefore, in the person of its agent, the board, sits not only as a perpetual overseer, interpreter and censor of state legislation on the subject, but, as lord paramount, to determine whether the state is faithfully exe-

cuting its own law—as though the state were a dependency under pupilage* and not to be trusted. The foregoing, taken in connection with the provisions that money withdrawn can be used only in payment of compensation and that it must be paid through an agency approved by the federal board, leaves it, to say the least, highly uncertain whether the right of the state to withdraw any part of its own funds exists, under the act, otherwise than upon these various statutory conditions. It is true also that subsection (f) of § 904 authorizes the Secretary of the Treasury to pay to any state agency "such amount as it may duly requisition, not exceeding the amount standing to the account of such State agency at the time of such payment." But it is to be observed that the payment is to be made to the state *agency*, and only such amount as that agency may *duly* requisition. It is hard to find in this provision any extension of the right of the state to withdraw its funds except in the manner and for the specific purpose prescribed by the act.

By these various provisions of the act, the federal agencies are authorized to supervise and hamper the administrative powers of the state to a degree which not only does not comport with the dignity of a quasi-sovereign state—a matter with which we are not judicially concerned—but which deny to it that supremacy and freedom from external interference in respect of its affairs which the Constitution contemplates—a matter of very definite judicial concern. I refer to some, though by no means all, of the cases in point.

In the *License Cases*, 5 How. 504, 588, Mr. Justice McLean said that the federal government was supreme within the scope of its delegated powers, and the state governments equally supreme in the exercise of the powers not delegated nor inhibited to them; that the states exercise their powers over everything connected with their social and internal condition; and that over these subjects the federal government had no power. "They appertain to the State sovereignty as exclusively as powers exclusively delegated appertain to the general government."

In *Tarble's Case*, 13 Wall. 397, Mr. Justice Field, after pointing out that the general government and the state are separate and distinct sovereignties, acting separately and independently of each other within their respective spheres, said that, except in one particular, they stood in the same independent relation to each

* Compare Snow v. United States, 18 Wall. 317, 319-320.

other as they would if their authority embraced distinct territories. The one particular referred to is that of the supremacy of the authority of the United States in case of conflict between the two.

In *Farrington* v. *Tennessee*, 95 U. S. 679, 685, this court said, "Yet every State has a sphere of action where the authority of the national government may not intrude. Within that domain the State is as if the union were not. Such are the checks and balances in our complicated but wise system of State and national polity."

"The powers exclusively given to the federal government", it was said in *Worcester* v. *State of Georgia*, 6 Pet. 515, 570, "are limitations upon the state authorities. But, with the exception of these limitations, the states are supreme; and their sovereignty can be no more invaded by the action of the general government, than the action of the state governments can arrest or obstruct the course of the national power."

The force of what has been said is not broken by an acceptance of the view that the state is not *coerced* by the federal law. The effect of the dual distribution of powers is completely to deny to the states whatever is granted exclusively to the nation, and, conversely, to deny to the nation whatever is reserved exclusively to the states. "The determination of the Framers Convention and the ratifying conventions to preserve complete and unimpaired state self-government in all matters not committed to the general government is one of the plainest facts which emerge from the history of their deliberations. And adherence to that determination is incumbent equally upon the federal government and the states. State powers can neither be appropriated on the one hand nor abdicated on the other." *Carter* v. *Carter Coal Co.*, *supra*, p. 295. The purpose of the Constitution in that regard does not admit of doubt or qualification; and it can be thwarted no more by voluntary surrender from within than by invasion from without.

Nor may the constitutional objection suggested be overcome by the expectation of public benefit resulting from the federal participation authorized by the act. Such expectation, if voiced in support of a proposed constitutional enactment, would be quite proper for the consideration of the legislative body. But, as we said in the *Carter* case, *supra*, p. 291—"nothing is more certain than that beneficient aims, however great or well directed, can

never serve in lieu of constitutional power." Moreover, everything which the act seeks to do for the relief of unemployment might have been accomplished, as is done by this same act for the relief of the misfortunes of old age, without obliging the state to surrender, or share with another government, any of its powers.

If we are to survive as the United *States*, the balance between the powers of the nation and those of the states must be maintained. There is grave danger in permitting it to dip in either direction, danger—if there were no other—in the precedent thereby set for further departures from the equipoise. The threat implicit in the present encroachment upon the administrative functions of the states is that greater encroachments, and encroachments upon other functions, will follow.

For the foregoing reasons, I think the judgment below should be reversed.

Mr. Justice VAN DEVANTER joins in this opinion.

SUPREME COURT OF THE UNITED STATES.

No. 837.—October Term, 1936.

Chas. C. Steward Machine Company, Petitioner, *vs.* Harwell G. Davis, Individually and as Collector of Internal Revenue. } On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

[May 24, 1937.]

Mr. Justice Butler, dissenting.

I think that the objections to the challenged enactment expressed in the separate opinions of Mr. Justice McReynolds and Mr. Justice Sutherland are well-taken. I am also of opinion that, in principle and as applied to bring about and to gain control over state unemployment compensation, the statutory scheme is repugnant to the Tenth Amendment: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people". The Constitution grants to the United States no power to pay unemployed persons or to require the States to enact laws or to raise or disburse money for that purpose. The provisions in question, if not amounting to coercion in a legal sense, are manifestly designed and intended directly to affect state action in the respects specified. And, if valid as so employed, this "tax and credit" device may be made effective to enable federal authorities to induce, if not indeed to compel, state enactments for any purpose within the realm of state power and generally to control state administration of state laws.

The Act creates a Social Security Board and imposes upon it the duty of studying and making recommendations as to legislation and as to administrative policies concerning unemployment compensation and related subjects. §702. It authorizes grants of money by the United States to States for old age assistance, for administration of unemployment compensation, for aid to dependent children, for maternal and child welfare and for public

health. Each grant depends upon state compliance with conditions prescribed by federal authority. The amounts given being within the discretion of the Congress, it may at any time make available federal money sufficient effectively to influence state policy, standards and details of administration.

The excise laid by § 901 is limited to specified employers. It is not imposed to raise money to pay unemployment compensation. But it is imposed having regard to that subject for, upon enactment of state laws for that purpose in conformity with federal requirements specified in the Act, each of the employers subject to the federal tax becomes entitled to credit for the amount he pays into an unemployment fund under a state law up to 90 per cent. of the federal tax. The amounts yielded by the remaining 10 per cent., not assigned to any specific purpose, may be applied to pay the federal contributions and expenses in respect of state unemployment compensation. It is not yet possible to determine more closely the sums that will be needed for these purposes.

When the federal Act was passed Wisconsin was the only State paying unemployment compensation. Though her plan then in force is by students of the subject generally deemed the best yet devised, she found it necessary to change her law in order to secure federal approval. In the absence of that, Wisconsin employers subject to the federal tax would not have been allowed any deduction on account of their contribution to the state fund. Any State would be moved to conform to federal requirements, not utterly objectionable, in order to save its taxpayers from the federal tax imposed in addition to the contributions under state laws.

Federal agencies prepared and took draft bills to state legislatures to enable and induce them to pass laws providing for unemployment compensation in accordance with federal requirements and thus to obtain relief for the employers from the impending federal exaction. Obviously the Act creates the peril of federal tax not to raise revenue but to persuade. Of course, each State was free to reject any measure so proposed. But, if it failed to adopt a plan acceptable to federal authority, the full burden of the federal tax would be exacted. And, as federal demands similarly conditioned may be increased from time to time as Congress shall determine, possible federal pressure in that field is without limit. Already at least 43 States, yielding to the inducement resulting immediately from the application of the federal tax and credit device, have pro-

vided for unemployment compensation in form to merit approval of the Social Security Board. Presumably the remaining States will comply whenever convenient for their legislatures to pass the necessary laws.

The terms of the measure make it clear that the tax and credit device was intended to enable federal officers virtually to control the exertion of powers of the States in a field in which they alone have jurisdiction and from which the United States is by the Constitution excluded.

I am of opinion that the judgment of the Circuit Court of Appeals should be reversed.